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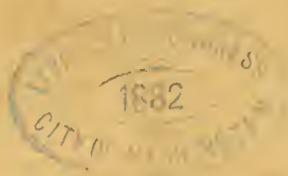

THE LECOMPTON QUESTION.

GOVERNOR WISE'S

TAMMANY, PHILADELPHIA AND ILLINOIS

LETTERS,

TOGETHER WITH

LETTERS TO CHARLES W. RUSSELL, ESQ.

BY A VIRGINIA DEMOCRAT.

LETTER

OF

GOVERNOR WISE

TO

THE NEW YORK TAMMANY SOCIETY.

RICHMOND, VA. Dec. 30, 1857.

Gentlemen,

I have the honor to acknowledge the invitation of the society of Tammany to attend their celebration of the Forty-Third Anniversary of the Battle of New Orleans, the evening of the 8th day of January next. I regret that I cannot be with you in person, but I tender to you my warmest sympathy in the sentiments and objects of your celebration. I trust that your venerable order will always uphold the Federal Constitution, with which you proudly claim to be cotemporaneous; that you will strive to revive and perpetuate the spirit of the Revolutionary fathers, who you boast were your founders, and that you will now, more than ever, cherish national as opposed to sectional feelings—a strict construction of the Constitution, as opposed to all compromises of its provisions—true Democracy in its republican form, as opposed to the licentiousness of mobs or mere majorities enacting their own "higher law"—and the liberties of the people against all power, delegated or undelegated, upon earth. To these ends you may well commemorate the victory of New Orleans. Its hero was "guided by law and bound by duty," when he took the responsibility to save a city then, and afterwards to save a country from a foe more formidable than foreign bayonets. He gave us the motto: "The Union must and shall be

preserved;" and I hope that his great authority still remains potent to stamp it upon every heart, and upon every banner in the whole country. To preserve it we must steadily adhere to the Democratic faith and platform; we must stand by you in standing by James Buchanan as the people stood by Andrew Jackson.

He had to contend with the money power, and subdued it by the Samson of Democracy. We now have to meet the black demon of the "higher law," and the same Samson survives in vigor to fight for the chosen people. God forbid that the Samson of Democracy shall at last be a Samson Agonistes, shorn and blinded, to become a destroyer. Almost every other people and every other party, except the American Democracy, have had their "bridges of asses," but I do pray that we may not be such asses ourselves as to make a bridge of slavery, or of any other subject, for us to stall at in a career and progress of national greatness. And yet, gentlemen, there are a great many Kans-asses in our country, and they are not half as stubborn asses as the cant-asses. A driver can get along after a manner with an ass that can, but the cruelest goad will not prevail with the asses who can't. They are the stubbornest of all, and are sure to stall just in the way and at the very place of most danger. They bray a political religion and religious politics. The best whip which ever touched these asses exactly in the raw, was James Buchanan's Conestoga thong, laid right on upon forty fanatical preachers "all in a row." As to your other motto, "Civil and religious liberty," ours was saved by the Virginia Democracy in 1855. We struck the dark lantern out of the hands of ineffable Sam, and none now are found so poor as to "hurrah" for him. We, therefore, have some right to say to you on other topics that all common sense and justice require is, that we let each other's property and peace and political privileges alone, and attend to the conservation of our own interests respectively at home. When we happen to meet in the common Territories, to make new homes and neighborhoods there, all we have to do is to respect each other's equal right. If we are Southern slaveholders, don't let our property be invaded or taken away from us; don't allow any power to prevent us from settling upon common lands, or don't drive us away from the settlements we have made upon a domain purchased or won by common treasure and united valor.

On the other hand, if you prefer that slavery shall not be incorporated in the new body politic of which you are to become mem-

bers, we promise you that it shall not be imposed upon you, without our consent, either by force or by fraud. We propose to go together to the polls as equals, justly respecting each other's rights, and there determine, by legal votes, what shall be the law of the case. If property be established in one form or another, it shall be respected; and, if forbidden in any other particular form, it shall not in that form exist in that community. Now, has this just, fair and equal course been observed in Kansas? I fearlessly say that it has not been observed. Fraud and force both, on both sides, have been attempted, and have, to a shameful extent, prevailed. And it is the great vocation of Democracy to put down both fraud and force in this and in all other cases. How? The case divides itself into two categories—the one *de jure* in the Territory, as between the Convention and the people; and the other *de facto* in the country at large, as between Congress and the Territory. In the first, in Kansas there was an "Enabling Statute." If the Kansas-Nebraska act did not enable the people to hold a Convention, or to make laws for their own self-government, it had no virtue in it at all. The Kansas-Nebraska bill organized a Territory, and the people thereof were enabled thereby to govern themselves. By their own laws they organized a Convention to frame a Constitution of State government. That Convention was, therefore, *de jure*, legitimate. It formed a Constitution, and had a right to form it. That was its function, and there its power ended, except to submit it, as a proposed organic law, to the fair and free election of the sovereign people, to be adopted or to be rejected by them. They, in their organized being of legal voters, are alone sovereign. The entire Constitution ought to have been submitted to their lawful voices at the polls.

The power was not delegated to the Convention to proclaim and establish a State Constitution; it had to be approved by Congress, and much more had it to be approved by the sovereign principals for whom the mere agent, the Convention, acted. It was not a statute law, repealable at will by a Legislature to sit yearly, and to be chosen by the precincts of annual elections. It was the great fundamental organic law, under which titles and tenures and franchises were to be held, and Judges and Legislators were to sit, and Executive authority was to wield the arms of State, and offices were to be filled, and justice was to be administered, and law was to be enacted, and confederate station was to be assumed, and

sovereignty itself was to be assumed—and it was to be irrepealable by Legislation, and to be, in a word, the supreme Constitution of a State, under which she was to be received into the most glorious Union of States which ever protected and fortified the liberties of mankind. What! Tell us that an instrument of this dignity; that republican government itself, was not to be submitted in its form and plan proposed, to the only lawful sovereigns—the organized people—not a mere mass of persons, but the *bona fide* inhabitants and legal voters of the State to be governed, for their election, to adopt or reject it! *De jure*, I say it ought to have been so submitted. Pure and undefiled republicanism, conservative Democracy, required that it should be so submitted.

There is no mobocracy in that idea. It is even, just, steady, organized, free republican action; the law of popular liberty, defined by citizenship and the rule of election, and is the true example of essential sovereignty in the people. Instead of so submitting this proposed Constitution by the mere agent, the Convention, deferentially to the principals, the organized sovereign people, there was a usurpation—a withholding from them of a fair, free, full and equal election to choose or not to choose their own Constitution of self-government. It was *ex parte;* it was all on one side; it was, in gambling phrase, the foul "Heads I win and tails you lose;" the Constitution was obliged to be adopted, with the clause or without the clause; the vote was bound to be "for the Constitution;" it was all *pro* and no *con*, and we may say that was no submission to an election at all. Election is choice of alternatives—to adopt as well as reject. There was no choice in this case, and no equality of voters in this case. Three men went to the polls: A said, "I vote for the Constitution, with or without the clause," but B and C said, "We vote against it, with or without the clause;" A's vote was counted, B's and C's were not to be counted, and thus one was made not only to offset two, but to be sole substitute in fact for three against the majority of two to one out of three.

Now this was but the unveiled trickery and shameless fraud of a so-called schedule. There was neither right nor justice in it. The Democracy of Virginia at least scorns a title of any sort founded on a fraud, occult or palpable, like this. We say that as between the Convention of Lecompton and the people of Kansas, the question was one *de jure*, and *de jure* the whole Constitution in all its parts ought to have been submitted to all the legal voters, *pro* and

con, and the two voters ought to have been allowed their voices against it as well as the one voter his voice for it. And, so far as slavery is concerned, it made the case worse against that species of property, to submit the slavery clause alone to the election of the people. Why discriminate in respect to that "peculiar institution?" Is it because it was peculiar? If we contend for any thing especially, it is that our property shall not be distinguished or discriminated from other property in legislation. It stands on the same footing of right to protection and preservation which is claimed for any other description of thing owned or possessed by others as property. Why was this singled out for the chances of prohibition? Was it not enough that the Badger amendment of the Kansas-Nebraska bill had already enacted that all laws protecting and establishing it prior to 1819–'20 should be repealed? Why repeat a discrimination against slavery in this schedule of submission?

This was ground enough to make pro-slavery partizans reject it. In fact, and of right, if the Constitution had not been submitted at all, in whole or in part, to the people, it would have been more impartial and more just to the slaveholder than as it was submitted. If there be any mistaken and misguided and misguiding parties in the South who would be guilty of arraying against the equal rights of slave property the irresistible and indisputable rights of popular sovereignty, we would save our property from the guardianship of such folly, and really, as property and protection must always most safely rely, rather upon law and order and the rule of justice and fair dealing—to "ask nothing but what is right, and to submit to nothing which is wrong." On the ground of policy, then, as well as *de jure*, the whole Constitution ought to have been submitted to all the legal voters, without fear, favor, fraud or force. So much for the case *de jure*. 3d. The Convention saw fit to submit the Constitution to the one voter alone, and not to all three of the voters, and the Convention was legitimate. It was legitimate *de facto*. Congress could not go behind the return; it cannot intervene, we are told, except to see that the law has authorized the act, and that the form is republican.

The law authorized the act, and we grant the form of the Constitution itself to be republican. We don't agree with Mr. Senator Douglas, that his own Kansas-Nebraska act was not an "enabling statute," and we don't agree, either, with the President, Mr. Buch-

anan, that slavery was the only "domestic institution" to be submitted, as such, to the people. The Kansas bill enabled the people to govern themselves; that was its first essence and its chief excellence, and every municipal institution of a State government is a "domestic institution." The President is a bachelor, and he must, therefore, be excused for not comprehending a "domestic institution" as well as we who have houses full of children. He had better reasons for his recommendation than he assigned. He was bound to look to the fact that this was the work of a legitimate Convention, and that the work itself was in form republican, and that these were subjects for Kansas alone to judge of. But whether Kansas had been allowed to judge—whether her people had been allowed to choose, to elect, to adopt or reject the Constitution of government proposed for them—whether they had been allowed to govern themselves, was another fact which had also to be looked to—*de facto*, whether the schedule was republican? *De facto*, whether there were not other domestic institutions besides slavery which ought to have been submitted to the sovereign, legal voters?

It is the very gladness and glory of our State governments, when organized, that they guard and govern the hearth-stones and homes of the people of the United States. The State governments are the municipalities of sovereignty which embrace especially the individual persons, the families, the households, the altars and the homes of our people. It is that which makes State rights, State laws, State organization, State action, so precious, because so domestic, in our confederacy. The Federal Government embraces rather national and foreign subjects of jurisdiction, and, therefore, it ought to leave all domestic questions to the States and the people. What then? Why, then, if the schedule of submission was anti-Republican, if it was partial, if it did not acknowledge and allow the sovereign right of the people to judge for themselves on the question of highest dignity, the organic law of their Government, and discriminated unequally between the subjects of property, the Congress of the United States ought not to reject the legitimate and Republican Constitution, but ought to adopt it subject to a fair and legal vote of the people of Kansas, according to a law to be prescribed by their Territorial Legislature, and to admit the State under the Constitution whenever the Territory shall proclaim its approval and adoption by the people. If they adopt it, to admit her into the Union *ipso*

facto; and if they reject it, to leave the people of Kansas in their own way to organize another Convention, and so submit another Constitution to Congress for approval.

This would be a plain and easy solution, and would take all the asses over the "bridge of shrieks." And for any difference of opinion as to the mere mode of submitting or solving this question, I protest that no true, honest, earnest Democrat shall be proscribed. No Northerner ought to denounce the President for recognizing the fact of the legitimacy of the Lecompton Convention, and no Southerner ought to denounce Senator Douglas for contending manfully for the right of the sovereign people to adopt or reject their own form of self-government. There is no conflict, in truth, between the two principles *de jure* and *de facto*—they, combined, rule the case, and rule it rightly. It may be very desirable to have Kansas admitted as a State as early as practicable, but nothing will be gained by admitting her into the Union in a mode offensive and oppressive to a large majority of her voters. Wisdom should teach a minority to insist upon nothing but what is sustained by perfect fairness and justice. A majority can take care of itself and a minority should be the last to resort to either fraud or force. Nothing less than the highest tone of morality can protect a minority in its rights, or will restrain a majority from wrong.

The great State of New York should realize the responsibility resting upon her. If she will stand by Mr. Buchanan as she did by Gen. Jackson; if her Democracy will only firmly unite; if she will maintain no other rule than the just rule of the law and the Constitution; if she will remember her greatest stake in swelling the late Democratic triumphs into a permanency of power, and in maintaining law, order, justice, peace and union; if her Democracy will cease their factious divisions and devotedly and unitedly come up to the patriotic work of saving a happy and prosperous confederacy from the dangers of dissolution, or the disasters of civil war, then truly New York will resume her empire and be an arbitress thrice blessed as the peacemaker. All the sister States already contribute to her beauty and strength; she is in position and power to be an arbitress, but to be so in truth and with effect, she must be sanctified to the high and holy office.

HENRY A. WISE.

Col. Daniel E. Delevan,
Grand Sachem of the Tammany Society.

Review of "A Review

OF

GOV. WISE'S TAMMANY LETTER,

By an Eminent Virginia Statesman."

To Charles W. Russell, Esq. of Wheeling, Virginia:

SIR,

Whatever may be the personal or political objects intended to be effected by your late letter addressed to the Governor of Virginia, through the columns of "The South" newspaper, it must be inferred, by every attentive reader, that you have not bestowed a careful perusal, either on Governor Wise's letter, which you make the subject of censorious animadversion, or on the Lecompton schedule itself, concerning which the Governor's letter was written.

At the outset, you charge Governor Wise with "an apparent incongruity between his sentiments and his voluntary engagements to Virginia, to the South, and to the President." Fairly considered, such a statement should be made the conclusion at which an argument should arrive, and not the premise upon which it is based. And this *petitio principii* is much less objectionable than the following statements, upon which you mainly depend to sustain your disapproval of the Governor's conduct. I give your own language:

"Your avowed object is to defeat the admission of Kansas as a State with the Lecompton Constitution, which protects slavery, and to require the formation of another Constitution, which, you obviously believe, will prohibit slavery."

Again: "You stimulate Congress to reject this Constitution mainly because the Convention which framed it—a legal Convention, as you

properly claim—submitted to a vote of the people only that portion of it which relates to slavery."

Again: "You have a theory that 'the people' have a right to vote upon their entire Constitution, however legally and regularly framed by a Convention of their delegates. Because the Lecompton Convention did not wholly conform their action to your theory, you have denounced their method of submitting the slavery clause to a popular vote as 'unveiled trickery and shameless fraud.'"

Now, Governor Wise never did avow any such object as that which you impute to him—nor can any such object or intent be at all deduced from his language. He has never proposed that Congress shall refuse to admit Kansas as a State under the Lecompton Constitution. He simply argues that Congress may, and, under the circumstances, ought to enable the people of Kansas themselves, by a fair, free, popular vote, to decide whether they will or will not adopt the Lecompton Constitution as their act and deed. This is the mode of Congressional deference to the will of the people of Kansas, which he proposes—and not "mainly because the Convention which framed" the Constitution "submitted to a vote of the people only that portion of it which relates to slavery." Governor Wise expressly denies that the Convention ever did submit the slavery clause to a legal vote by the people. You thus state that Governor Wise asserts the very thing which he denies. You reiterate, on your own responsibility, the assertion which you impute to him; and this assertion, as I will presently show, is flatly contradicted by the language of the Lecompton schedule itself. And your subsequent allegation is equally incorrect. When Governor Wise denounced the action of the Lecompton Convention as a perpetration of "unveiled trickery and shameless fraud," he did not refer, and cannot be fairly understood to refer, to their mere disregard of the theory of popular sovereignty. He denounced "their method of submitting the slavery clause"—not "because the Lecompton Convention did not wholly conform their action to his theory"—but because the method itself of pretended submission adopted by the Convention, was intended to prevent, and did necessarily defeat, that fair expression of the people's will to which the Convention professed to refer for decision. This is the main reason of Governor Wise's opposition; not, as you state it, to the enaction of the Lecompton Constitution, but to the Congressional endorsement of the Lecompton schedule. He does insist that a Convention elected to

frame a Constitution violates the right of popular sovereignty by an attempt, unauthorized by express delegation of power, to enact a Constitution by their own proclamation, and without referring the question to popular choice; but had the Lecompton Convention openly and without trick or subterfuge, ventured on such a course of action, Governor Wise agrees that Congress might, in the exercise of a discretionary power, sanctioned by precedent, immediately admit Kansas as a State, and leave it to the people of the State to inflict appropriate punishment on their own presumptuous servants. For the sake of the rights and interest of the South, Governor Wise does protest against a dangerous innovation which would permit a mere constitutional convention, by their uncontrolled action, to discriminate between slave property and other species of property, invidiously to the former, by a method of partial submission which would withhold from a Southern man the right to vote for or against a rule of organic law which might entirely exempt from taxation the steam engine of the Northern settler, and at the same time would enable the Northern man to vote against the employment of slave labor by the Southern settler, and even to deprive him, without compensation, of property in slaves already in his possession. But there is another question involved in the responsibility of Congress with reference to the Lecompton Schedule, a moral question of eminent gravity, and one which involves the most comprehensive issues of expediency. Truth or falsehood, fair dealing or fraud, which of these appears on the face of the schedule itself? Governor Wise enters into an exposition of the schedule, demonstrating from its own terms the betrayal of a scheme of "unveiled trickery and shameless fraud." Without an attempt at argument or counter exposition, on this point, you are content to come before the public with a mere denial of his conclusion. And you impute to him an attitude of opposition to the Lecompton Constitution which he has never assumed—attribute to him forms of reasoning which he has not adopted, and refer his conduct to inducements the influence of which he has neither acknowledged nor evinced.

I shall not attempt to enquire into the motives which have led you to commit these errors. Apart from such a consideration, you have assumed before the public the responsibility of reprehending the conduct of a man who employs a high trust committed to him by the people of Virginia. You have cited him before the tribunal of public opinion, to charge him with having misused the influence

attaching to his position. You charge, that by having published an unofficial expression of individual opinion on a question of public morals and public policy, he has displayed a tenacity of adherence to mere theoretical abstraction, which has seriously misled his judgment on a practical question of momentous interest to his party and his state; that he has thereby committed an act which tends to jeopardize the interests of both; and that he has not been restrained from such a course of conduct "by any tenderness for the anxieties of a generous people who exalted him to his present station, or by any reluctance to witness or to cause the exultation of their enemies."

Such is the substance of the charge contained in your letter, and such the mildest form of statement of which it is susceptible. The accusation is a grave one. It amounts to nothing less than this: that a statesman, who, during a quarter of a century, has been almost uninterruptedly employed in various positions of high national trust, has, after this length of experience, exhibited a mental deficiency dangerous to the public interests necessarily confided in part to his guardianship by his present official station. You, sir, make this charge through the medium of an organ of the metropolitan press of Virginia, which heralds your accusation as the production of an "eminent Virginia statesman." Permit me to suggest such an accusation should have been prepared with such a cautious scrutiny of all the circumstances of the case as to leave no doubt whatever concerning the accuracy of the recital, and accompanied by such a sufficiency of citation, illustration and argument, as to leave before the public no material point entirely dependent on a mere statement of fact or of opinion expressed by the accuser. It remains for the public to decide whether you have thus fulfilled a grave responsibility, voluntarily assumed, or whether (as I am bold to assert, without fear of refutation) you have made this charge carelessly, without study and without deliberation sufficient to inform you accurately of the facts involved, or to instruct you in the principles to be considered.

Upon the question of the right of the people to dictate their own form of government, you do not venture to express an opinion. And yet it must be conceded that no element of greater importance is suggested by the present discussion. It involves the fundamental principle of practical as well as of theoretical government. To ignore theoretical principle for the attainment of apparent tempo-

rary expediency, is a policy which has indeed been frequently attributed (whether justly or unjustly, I will not presume to say) to that political party with which you have until lately been associated. But the founders and the leaders of the Democratic Republican party have persistently denied both the morality and the expediency of such a system. They have regarded it as destructive to the vital energy of free government—because its necessary tendency is to confuse sovereign power with mere delegated authority—because it leads to encroachment by the latter upon the province of the former—because it serves to render the agent irresponsible to the principal. And the right of self government, by the repeated acknowledgments of the people of our own country, has been removed from the province of mere contemplative speculation. It has been recognized as the starting point—the first governmental axiom necessary for the solution of each political problem. The instinct, the judgment, the faith of the American people have recognized the moral principle that the God of nature, who has made society a human necessity, and government a social necessity, has Himself revealed, through the constitution of material and spiritual creation, certain great natural laws for the foundation and perpetuity of Government, and has not left this great necessity of our aggregate existence to depend on the requirements of a shifting expediency. And we have been taught to recognize among these dictates of natural law, the moral truth that sovereign power is the inalienable right of the whole people of each political community. And this right involves a duty and a responsibility existing in the people, to preserve unimpaired to themselves the full exercise of sovereignty, by delegations of mere municipal and subsidiary power. And by reason of nature and necessity, a sovereign people can only exercise sovereign right by the enactment of organic law. And when the enactment of organic law becomes vested in any man or body of men, save and except the whole people, *pro tanto*, the exercise of a divine right of sovereignty is removed from the hands of the people, and to the same extent, a monarchical or oligarchical authority is raised above the heads of the people. The sovereign people may, indeed, cast away their birth-right of sovereignty, without responsibility, except before the throne of that God who has committed a talent to their keeping; but such a renunciation of moral duty can only be effected by an express act of the people.

The ancient maxim, *vox populi, vox Dei*, has become the sheet

anchor of our political system. It may be theoretically ignored by individual thinkers, who prefer an anti-Democratic theory, or who deny the existence of any correct political theory founded on moral necessity. But these dissenters among us must effect a revolution in Government, before they can practically impugn the vital principle which has been recognized and established as the corner-stone of our governmental fabric. The right of popular sovereignty constitutes, *de facto* as well as *de jure*, the pre-eminent rule of American law. How can there be, then, such a state of things as asserted in your letter with regard to Kansas? How can the two principles of popular sovereignty and the supremacy of the law, be "made to clash against each other," in a Democratic Republic, where the right of popular sovereignty is itself the supreme law?

The right of the people to dictate their own form of organic law is beyond the pale of dispute. And there are but three modes in which this right can possibly be exercised: 1st, by popular ratification of a proposed Constitution; 2nd, by the enactment of a Constitution by a convention expressly authorized by the people to enact the same; 3rd, by popular acquiescence in a Constitution proclaimed by a convention acting with express authorization. It cannot be denied that the first of these is the only manner of the exercise of popular sovereignty unattended with danger of the infringement of the right of sovereignty. The second method constitutes a most dangerous extension of delegated power. The third leaves in abeyance the question of the legality or illegality of a Constitution, until a lapse of time shall have decided it by sufficient evidences of popular dissent or acquiescence. Neither system, however, denies, or ever was intended to deny, the ultimate right of popular decision. The two instances which you cite are in themselves sufficient to demonstrate this proposition. The convention which framed our Federal Constitution did not pretend to enact or proclaim the same. It was submitted for ratification by each of the separate States; and this ratification was effected by conventions expressly authorized by the people of each State. And the first constitution of Virginia furnishes the best possible example of a system of law proclaimed by a convention unauthorized even to *frame* a constitution, which constitution was afterwards adopted by popular acquiescence.

That Governor Wise has not failed to consider this instance in connection with Kansas affairs, is apparent from his letter of the 19th November last, from which I will hereafter quote at length.

Mr. Jefferson's views on the same subject are expressed in the following language:

"To our convention no special authority has been delegated by the people to form a permanent Constitution, over which their successors in legislation should have no power of alteration. They had been elected for the ordinary purposes of legislation only, and at a time when the establishment of a new government had not been proposed nor contemplated. Although, therefore, they gave to this act the title of a Constitution, yet it could be no more than an act of legislation, subject, as their other acts were, to alteration by their successors. It has been said, indeed, that the acquiescence of the people has supplied the want of original power. But it is a dangerous doctrine to say to them, 'whenever your functionaries exercise unlawful authority over you, if you do not go into actual resistance it will be deemed acquiescence and confirmation.' Besides, no authority has yet decided whether the resistance must be instantaneous; when the right to resist ceases; or whether it has yet ceased."

Indeed it is apparent that the whole doctrine of popular acquiescence pre-supposes a usurpation of authority on the part of a convention, and there is no other principle except that of popular acquiescence from which a constitution thus proclaimed by a convention, can derive binding efficacy.

So much for the general doctrine. Let us now turn to the duties and powers of Congress, in the instance of a territory applying for admission as a state. And here we may safely consider the precedents, as well as the principles involved. Let us first suppose that the Lecompton Convention had sent to Congress a constitution, without submission, real or pretended, to popular ratification or rejection. As you properly admit, the old "notion of Congressional control" is "exploded." Congress cannot rightfully alter the Constitution, nor substitute a Constitution of its own enactment. It must accept or reject. But may it not accept the whole Constitution provisionally? The Constitution, if accepted at all, must be accepted as the act and deed of the people of Kansas. You may say that the fact of its being presented by a Convention raises the presumption that it is the act and deed of the people. But may not Congress require, instead of a mere presumption, the best positive evidence of this essential fact? May not Congress enquire whether the Convention has been authorized by the people, to *enact* and *pro-*

claim, as well as merely to *frame* a Constitution? If it be found that the Convention has no express authority for such extensive powers, may not Congress require, that the Constitution shall be enacted by the unmistakable authority of the people, before it will agree to impose the Constitution on the people? I can imagine no principle of Constitutional right, or of moral duty, which makes it imperative on Congress to abstain from thus protecting the people of a territory from even the possibility of being subjected to a Constitution repugnant to their wishes. Can you? On what ground, then, do you object to such a right of congressional action. On precedent? You cannot find a single precedent which denies the power. You can find, indeed, precedents which would *permit* Congress to accept a Constitution unsanctioned by express popular authority. But these precedents go no further than to vest in Congress a discretionary power, and by no means make it imperative on Congress to accept a Constitution merely because it is presented by a legally constituted Convention. And other precedents directly establish the power of Congress to admit a territory provisionally. These I will more particularly refer to in the further discussion of this question.

Referring to the supposed case of the application of Kansas to be admitted under a Constitution submitted to Congress without reference, or a pretence of reference to popular ratification, Governor Wise has denied the right of the Convention, as a question of power between the Convention and the people, to proceed to the unauthorized enactment of the Constitution; he has contended that such an attempt by the Lecompton Convention must prove injurious to the interests of the South, and has impliedly asserted the discretionary power of Congress in the case supposed. Further than this, he has not pushed the question of theoretical right.

He has, moreover, assured us that, under the circumstances of the case, he would recommend the immediate admission by Congress. Here is his own language:

"It is true that he (Mr. HUNTER) *seems* to be opposed to the submission of the Constitution of Kansas by her Convention, to the bona fide inhabitants and legal voters of that Territory. He takes the ground that if the people are silent about the power of the Convention in this respect, that if the Convention was not *expressly restrained* from proclaiming whatever form they adopt as the Constitution of the State, then they have the power so to proclaim it, and to send

it to congress, without submitting it to the people. I know that there are precedents for this exercise of power by Conventions, but the precedents are in their inception exceptionable cases, and the doctrine which upholds them is, in my humble opinion, anti-democratic. The true doctrine is, *that the powers not delegated by the people are reserved to them. They may grant* such a power to the Convention; but if *not granted*, it is *reserved*, that a Constitution, framed and proposed by a Convention, which is but a representative body, shall be submitted to the people, who alone are Sovereign. The Convention to form a Constitution is not sovereign or supreme. The act of *making a State* is the highest act of sovereign power, and is the act of humanity, next highest to that of Deity, in making a being of any sort. The *act is no less than to create a sovereignty itself.* As a Democratic Republican, then, I would never delegate conventional powers to any body of agents to create a State, without requiring them to submit the act to their principals, the people. In 1776, an unauthorized body of patriots assembled at Williamsburg, constituted themselves a Convention, and formed and proclaimed a Constitution for Virginia, without submitting it to the votes of the Colonists. But *revolution* began in that way. There was no time and no opportunity to poll votes, in a moment of rebellion, under the domination of British arms.

"The masses never did make a revolution—never can and never will. A devoted, and self-sacrificing few must ever take the initiative and lead the first movements of resistance. It required a Patrick Henry to seize the powder of the old magazine, and the Convention of 1776 *snatched liberty for* the people, rather than a *Constitution from them.* In such times *inter arma silent leges.* The *salus populi* was then the plea and the justification. But what does the *salus populi* call for in piping times of peace, when there are none to make us afraid at the polls of a Republic? Why a very different rule and order of proceeding, when there is time and place and opportunity of consulting the sovereign people themselves, protected in their assemblies and votes. Accordingly, when Virginia formed a Constitution a second time, in 1829–30, and a third time in 1850–51, the *form* adopted by the Convention was in both instances submitted to the legal voters—aye, more, *to the new voters created by the new form before itself was adopted.* That the people shall of right judge for themselves, at the polls, of their own organic law, unless they expressly authorize agents to make and to adopt a Constitution for

them, is a principle for which, as a member of the last Convention of Virginia, I would have contended as strenuously as I did for any other principle of popular sovereignty or of self-government. There was no such authority delegated by the people to the Convention of Kansas. Yet, if upon precedent, the Convention of Kansas adopts a Republican form of State Government, and reports it to Congress, without submitting it to the people, I agree with Mr. Hunter, in accepting it and voting to receive Kansas as a State—slave or free—into the Union. And why? Because, first, of precedent, and secondly, whether it be accepted or rejected, it has to be submitted, or is subject at last, in either event, to the popular will. If a majority do not approve of the Constitution, they may organize another Convention immediately, and adopt any republican form, after they are once a State, *without submitting it at all to Congress.* The question now is, then, not whether Congress should adopt or reject the Constitution of Kansas, submitted to the popular vote or not, but WHETHER IT OUGHT NOT TO BE SUBMITTED TO THE PEOPLE BEFORE IT IS SUBMITTED TO CONGRESS? Which is the better policy for the pro-slavery party to pursue? To submit the Constitution at once to the people, and have an end of the agitation, or to continue the shrieks for freedom a while longer? If a majority of the legal voters are opposed to the plan of government proposed by the Convention, their voices ought to prevail; a constitutional form ought *not to be imposed* upon them, and *cannot* be but for a day, and their sovereign power ought not to be snatched from them even for a moment. If Congress should AID AND ABET A CONVENTION IN DOING SO, WOULD NOT CONGRESS BE INTERVENING AGAINST NON-INTERVENTION? And if a majority is in favor of the form proposed, they will prevail, and the controversy will end. If strict impartiality, justice and fairness are observed, the people will not be incensed; but if a minority shall abuse the adventitious advantages of an organized Convention to send their Constitution to Congress, without first submitting it to the people, they will be goaded by indignation to acts of violence, they will tear the Constitution into tatters and trample it into the dust, and upbraid the pro-slavery party with a willingness and an attempt to rule *per fas aut nefas*, and they will organize more stringently, doubtless, against slavery, than they would ever have done at first. Again: if the Constitution be submitted to them first, it must be submitted to Congress afterwards, to see that its provisions are republican, and it must pass in review of the Representatives in

Congress as well as in the Territory. But, if not submitted to the people in the first instance, and Congress accepts it, and then the people of Kansas change and adopt another, and, it may be a worse Constitution, this latter will not have to be, and will not be, submitted to Congress at all. Aiming then at the same end, to protect the equal rights of slaveholders, and to end the excitement and strife soonest and safest, which is the better policy, to appeal to the people at once, in a peaceful, fair and just mode, or to be obliged at last to abide by their anger and resentment, after impairing our own moral attitude before the country?"

These reflections and considerations must serve as an introduction to the discussion which I propose, concerning the mode of constitutional enactment which has been resorted to by the Lecompton Convention. In another letter I will demonstrate:—

1st. That the Convention of Kansas does, by its schedule annexed to and made a part of the Constitution, specifically deny its own authority to proclaim a Constitution unsanctioned by popular ratification.

2d. That the mode of ratification attempted, is itself unsanctioned by any principle of republican faith, or any precedent of republican history.

3d. That this reflection applies as forcibly to the slavery clause, as to any other clause of the Lecompton Constitution.

4th. That Governor Wise's denunciation of this anti-republican method by which it has been attempted to foist upon the people of Kansas a Constitution, adopted neither by a vote of the Convention, nor by a vote of the people, is entirely consistent with the whole tenor of his letter of November last.

5th. That an immediate acceptance by Congress of the Lecompton Constitution, would involve the grossest act of congressional intervention in the domestic affairs of Kansas; that it would impose upon Kansas an anti-republican form of government, by the mere force of an unconstitutional exercise of arbitrary power.

6th. That any such step would necessarily prove the severest blow to the interests of the Southern States and to the entire Democratic party.

A VIRGINIA DEMOCRAT.

CONTINUATION

OF A

Review of "A Review

OF

GOV. WISE'S TAMMANY LETTER,

By an Eminent Virginia Statesman."

To Charles W. Russell, Esq. of Wheeling, Virginia:

Sir,

In my last letter, I have undertaken to demonstrate:

1st. That the Lecompton Convention does, by its schedule annexed to and sent to Congress tögether with the Constitution, specifically deny its own authority to proclaim a Constitution unsanctioned by popular ratification.

For an entire corroboration of this assertion, I refer to the following extracts from the schedule itself:

"Sec. 11. Before this *Constitution* shall be sent to Congress for admission into the Union, as a State, it shall be *submitted to all the white male inhabitants* of this Territory for *approval or disapproval*, as follows: The President of this Convention shall, by proclamation, declare that on the 21st day of December 1857, at the different election precincts now established by law, or which may be established as herein provided, in the Territory of Kansas, an *election* shall be held, over which shall preside three judges, or a majority of three, to be appointed as follows: The President of this Con-

vention shall appoint three Commissioners in each county in the Territory, whose duty it shall be to appoint three judges of election in the several precincts of their respective counties, *at which election the Constitution framed by this Convention shall be submitted to all the white male inhabitants* of the Territory of Kansas, in the said Territory upon that day, and over the age of twenty-one years, *for ratification or rejection*, in the following manner and form: The voting shall be by ballot. The judges of said election shall cause to be kept two poll books, by two clerks by them appointed. *The ballots cast at said election shall be endorsed "Constitution with slavery," and "Constitution with no Slavery."* One of said poll books shall be returned within eight days to the President of this Convention, and the other shall be retained by the judges of the election and kept open for inspection. The President, with two or more members of this Convention, shall examine said poll books, *and if it shall appear, upon said examination, that a majority of the legal votes cast at said election be in favor of the "Constitution with Slavery," he shall immediately have the same transmitted to the Congress of the United States, as hereinbefore provided. But if, upon such examination of said poll books, it shall appear that a majority of the legal votes cast at said election be in favor of the "Constitution with no Slavery," then the article providing for slavery shall be stricken from the Constitution by the President of this Convention, and no slavery shall exist in the State of Kansas*, except that the right of property in slaves now in this Territory shall in no manner be interfered with, and shall have transmitted the Constitution so ratified to the Congress of the United States, as hereinbefore provided."

* * * * * * *

"Sec. 14. Every person offering to vote at the aforesaid election upon said Constitution, shall, if challenged, take an oath to support the Constitution of the United States, and to support this Constitution, if adopted, under the penalty of perjury under the territorial laws.

"Sec. 17. This Constitution shall take effect and be in force from and after its ratification by the people, as hereinbefore provided."

Thus there no longer exists a question as to the absoluteness or the limited power of the Convention. That body has, by its own solemn act, renounced all authority, rightful or pretended, to enact a Constitution by its own vote. Had the Convention avowedly presumed to enact a Constitution without popular ratification, then there might have been a question as to whether Congress could go

behind the act of the Convention, to decide between the Convention and the people. But now the Convention has avowedly decided that the *whole Constitution* shall be submitted to *all the white male inhabitants* of the Territory, for their "*approval or disapproval*," for their "*ratification or rejection.*" The same provision is repeated in the same section, under two different forms of expression, the most forcible and the most explicit.

Whatever authority may attach to the act of the Convention, has gone forth to assert the unqualified right of the people, and of the people alone, to enact the Constitution, or to reject it. From the act of the people, by their express ratification, it can only derive force and existence. It can only "take effect and be in force from and after its ratification by the people." By the express words of the schedule, Congress is only authorized to act upon the Constitution, after it shall be "*ratified*" by means of a popular "*election.*" Mark the words of the schedule. "*Before this Constitution shall be sent to Congress*," "*it shall be submitted to all the white male inhabitants of this Territory for approval or disapproval.*" Thus an election by which the Constitution shall be submitted for approval or disapproval, by all the citizens of Kansas, is the only prescribed mode by which to authorize an act of Congress to admit Kansas to the Union.

A further examination of the schedule demonstrates my second proposition, which I take the liberty to repeat more fully and more forcibly than in my last letter:—2. That the mode in which the Lecompton Convention has pretended to give effect to the proposed submission of the Constitution for popular ratification or rejection, is itself not only unsanctioned by, but irreconcilable with, any principle of republican faith, or any precedent of republican history.

The same schedule which prescribes an *election* by *all* the citizens of Kansas to determine the question of *ratification or* REJECTION of a proposed Constitution, provides that each voter shall be permitted to vote only by one of two ballots—*for* "the Constitution with slavery," or *for* "the Constitution with no slavery." The schedule provides that the Constitution shall be adopted or rejected by *election*, and then adopts a mode of submission by which there can be no election—for election is a choice between alternatives, and here there is no alternative—no choice; every voter is obliged to vote *for* the Constitution; not one is allowed to vote *against* it. The schedule provides that the Constitution shall be submitted for *ratification or rejection*, and the mode of submision adopted does not per-

mit a single vote to be cast for rejection—no citizen is permitted to vote at all, unless he will vote for ratification; and ratification is itself defeated, for there is properly no ratification where there is no power to reject.

The schedule provides that the Constitution shall be submitted to *all* the citizens of Kansas, and the mode of submission adopted excludes from the polls every citizen who will not vote *for* the Constitution, thus rendering it possible for the smallest conceivable minority to enact a Constitution, despite the wishes of the largest possible majority. One man who desires to vote for the Constitution shall be allowed to vote, and a thousand men who desire to vote against the Constitution, shall not be allowed to vote—and this under a schedule which professes to submit the Constitution for *ratification* OR REJECTION by ALL the citizens of Kansas. The language addressed by the Convention to each citizen is simply this: "*You may vote for the Constitution or against it—whichever you please; but if you do not vote for the Constitution you shall not vote at all.*" But this is not all. By the 14th section of the schedule, each citizen challenged at the polls is obliged to take an oath to support the Constitution, if adopted, "under the penalties of perjury." Thus a majority of the citizens going to the polls to vote against the Constitution, relying on the provision of the schedule, which entitles them to vote for rejection, are first to be insulted with a test oath to support the Constitution, "*if adopted*," and after they are bound to support it under the penalties of perjury, must then see their votes rejected, and learn that the Constitution is to be *unconditionally adopted.*

Thus the schedule which in the first instance acknowledges the principle of submission, which provides for an election by all the citizens to decide the question of ratification or rejection, goes on to prescribe a mode of submission which defeats the principle of submission, defeats the possibility of election, excludes the possibility of rejection, reduces ratification to a pretence and a delusion, disfranchises every citizen who refuses to cast an affirmative vote, and by force of an odious test oath binds it upon the consciences of men to support a constitution which claims for its adoption no better sanction than this series of insults applied to an outraged people. *Is this law? Is this republicanism? Is this common sense or common honesty?*

But you insist that "the question of slavery—the ostensible point

of controversy," was submitted to a fair, full, free vote for ratification or rejection. I utterly deny this assertion. The language of the Lecompton schedule demonstrates my proposition:

3d. That the mode of ratification applied to the slavery clause is irreconcilable with any republican precedent or principle.

To illustrate this fact, I need not step aside to prove that the Lecompton Constitution, with or without the so-called slavery clause, is in either case, a pro-slavery Constitution. I will not stop to enquire whether the President's annual message correctly interprets the Kansas act, when it declares that the organizing statute made it the right and duty of the people to decide the whole question of slavery by a general vote. I will not proceed to argue, that if the construction adopted by the President, be the true construction, no feature or contingency included in the question could rightfully be subjected to a final adjustment, by the mere action of the Convention. I will consider the matter as if the slavery clause embodied the entire slavery question.

It will be remembered that, according to the schedule, no voter is allowed to vote purely and simply for or against the slavery clause; that the only form of ballot permitted is, "*Constitution* with slavery," or "*Constitution* with no slavery;" thus the right of voting at all is restricted to such citizens as are willing to vote *for* the Constitution; no citizen conscientiously opposed to voting for the Constitution, is permitted to vote for or against the slavery clause; and that each citizen, before voting at all, must take an oath to support the Constitution under the penalties of perjury. Thus the slavery clause is submitted for ratification or rejection, neither to a vote of the people, nor even to a vote of a majority of the people. It must be ratified or rejected—not even by the whole number of votes cast for the ratification of the other clauses of the Constitution. The slavery clause may be ratified or rejected by a mere majority of the persons voting to ratify the rest of the Constitution, however small a proportion their number may bear to the whole number of legal voters in Kansas.

Let us illustrate more precisely the effect of this method of submission. Suppose that four neighbors, "A," "B," "C" and "D" meet at the polls; they may all be pro-slavery men, or all anti-slavery, or some pro-slavery and others anti-slavery—neither supposition is material.

"A" desires to vote on the slavery clause; but there are other

clauses in the Constitution which he cannot conscientiously endorse; hence, he is not permitted to vote.

"B" entertains opinions similar to those of "A"—but is somewhat less scrupulous. He would agree to purchase the privilege of voting on the slavery clause, by voting for certain obnoxious clauses, could he be permitted to do so under protest of compulsion; but he feels that he may hereafter be called on to oppose the enforcement of such obnoxious clauses, and therefore refuses to submit to the test oath to support the Constitution under the penalties of perjury. He is challenged and not permitted to vote.

"C" does not object either to the test oath, nor to any part of the Constitution; but is restrained from voting because he is unwilling to sanction an innovation by which a mere Convention has undertaken to discriminate invidiously against slave property.

"D" is not deterred from voting by any of these objections; but he says: "Neighbors, I have seen enough to convince me that this is not a fair election. Unnecessary obstacles are thrown in the way to keep men from the polls. You are all wantonly prohibited from voting according to the dictates of your reason and conscience. I will not participate in an unfair election."

Thus four men are excluded from the polls, each by an honest and reasonable objection. Has the Convention, or has Congress the right to decide that any one of these is not a sufficient objection? Moreover, is there any means of determining whether four thousand or fourteen thousand voters may not be kept from the polls by the same objections? Not only every man who is opposed to the Constitution, but many in favor of it, are thus prohibited from voting on the slavery clause. By whom, then, was the slavery clause adopted? Not by a vote of the Convention; that body decided that it should be referred to a popular vote. Not by a vote of the whole people. Not by the votes of such of the people as would have voted on it, had they been permitted to cast unconditional votes. But the question of "slavery or no slavery" has been decided by a majority of the votes of such persons only as would agree to participate in an unfair election, to vote *for* the Constitution, and to submit to an odious test oath. It was thus rendered morally impossible to obtain for the slavery clause either adoption or rejection, by a majority of the legal voters of Kansas. The decision was referred to a minority of citizens, as necessarily and as effectually as if the Convention had limited the right of suffrage to men over sixty years of age. As an

honest man and a Democratic Republican, I undertake to say that the method adopted by the Lecompton Convention, of deciding the question of "slavery or no slavery," was as anti-republican and as dishonest, as if the members of the Convention had agreed to decide the question by a throw of dice or a deal of cards.

Such is the necessary and unavoidable exposition of the Lecompton schedule, which is presented to Congress, together with the Lecompton Constitution. Now, there are two questions to be answered affirmatively, before Congress can rightfully admit Kansas into the Union under this proposed form of Constitution.

1st. Is this paper the act and deed of the people of Kansas, either by their own immediate act, or by the act of a convention legally authorized to enact the same?

2d. Does this paper embody a Republican form of Government?

Let us consider these questions in the order presented. There is no necessity for Congress to look for extrinsic evidence. The schedule itself answers as follows: "The Convention has refused to enact the Constitution by its own vote. It has required that the Constitution shall be adopted or rejected by a fair, full, free popular vote."

"The Constitution has not yet been so adopted. One part of the Constitution has been submitted to a pretence of ratification, by the enrollment of all votes polled for ratification, and the refusal to permit any vote to be polled for rejection. Another part has been submitted for ratification or rejection—not by a majority of the legal voters of Kansas, but by a majority of a restricted number of voters."

Can Congress, with this evidence before it, decide that the Lecompton Constitution is either the immediate act and deed of the people, or their act and deed through their authorized agent, the Convention of Kansas? Does not the schedule manifest the utter impossibility of either supposition?

But, for the sake of continuing the investigation to the utmost supposable limit, let us imagine that Congress could, by some rule of construction hidden from the uninitiated, decide that this Constitution is the act and deed of the people of Kansas. What then? Why the schedule under which they have enacted their Constitution, embodies an anti-republican mode of Constitutional adoption. The first and most important item of their proposed form of government, the mode of their enactment of organic law, constitutes a wide de-

parture from Republican liberty and Republican order, worse than monarchy, or oligarchy, or anarchy. It is a mixture of fraud and chance, unprecedented in the history of civilized government.

I trust, sir, that my suggestions on these points will induce you, at least, to study for yourself the intent and bearing of the Lecompton schedule. If so, I venture to predict that you will understand somewhat better than your letter indicates, the position which Gov. Wise has assumed with regard to this matter, and which I propose to make the subject of an additional communication.

A VIRGINIA DEMOCRAT.

CONTINUATION

OF A

Review of "A Review

OF

GOV. WISE'S TAMMANY LETTER,

By an Eminent Virginia Statesman."

To Charles W. Russell, Esq. of Wheeling, Virginia:

SIR,

In my first letter, I undertook to show:

4th. That Governor Wise's denunciation of the anti-republican method by which it has been attempted to foist upon the people of Kansas a Constitution adopted neither by a vote of the Convention, nor by a vote of the people, is entirely consistent with the whole tenor of his letter of November last.

The position assumed in the letter of November, was: 1st. That, as a question between the Convention and the people, the Convention was not authorized to proclaim a Constitution unsanctioned by popular ratification, because no such authority had been delegated by the people. 2d. Yet, if upon precedent, the Convention of Kansas should adopt a *Republican form of State Government*, and should report it to Congress, *without submitting it to the people*, Governor Wise agreed in the policy of accepting it and voting to receive Kansas as a state—slave or free—into the Union.

The case here supposed has never occurred. Congress has not

been called on to decide upon the right or the expediency of enquiring into the extent of authorization extended to the people by the Convention. The Convention itself has decided that the Constitution must be referred to all the white male inhabitants of the Territory, over twenty-one years of age, for their ratification or rejection. And the Convention, which did not presume to adopt the Constitution by its own immediate act, has resorted to a means of submission, contradicting its own language, by which to secure the color of popular adoption, and at the same time to defeat the possibility of popular ratification or rejection. The people have been told in one breath that they are *all* free to vote for the *ratification or rejection* of the *whole Constitution;* and in the next breath they are told that they may vote to ratify, but shall not vote to reject one part of the Constitution, and, that as concerns the other part of the Constitution, no citizen shall vote either to ratify or reject the same, except he shall first vote to ratify the first part and swear to support the whole Constitution, with or without amendment, under the penalties of perjury. Thus the Constitution has not been adopted by the immediate act of the Convention; it has not been adopted by the popular voice; it has not even been submitted to the people in any manner at all reconcilable with precedent or with republican principle.

Thus, Governor Wise's letter of December 30th, referred to a state of things entirely different from that supposed in his letter of November 16th. Nor could he in any manner have foreseen, at the date of his first letter, the position of affairs, which was only revealed to him more than a week afterwards, through the public press.

I am aware, sir, that you have not made any express charge of inconsistency between the positions assumed in the two letters referred to. But such a charge has been openly made by certain organs of an inimical faction, and your letter seems to give credit to the charge, by the following assertion: "Because the Lecompton Convention did not wholly conform their action to your theory, you (Governor Wise) have denounced their method of submitting the slavery clause to a popular vote as 'unveiled trickery and shameless fraud.'" By an examination of this whole matter, you will be satisfied that Governor Wise's denunciation was applied, not to a mere disregard of the theory of popular sovereignty, but to the fraudulent mode of pretended submission, which was so arranged

as to prevent a fair expression of the people's will, either on the slavery clause, or any other clause of the Constitution.

In view of this state of things, Governor Wise has taken a position which may be stated at large as follows: 1st, That the Convention was a legitimate Convention, and fully authorized to frame a constitution and propose the same for popular ratification or rejection. 2d, That the Convention did pretend to submit the constitution. 3d, That in the mode of submission, an unprecedented attempt was made to discriminate invidiously against slave property. 4th, That the whole mode of submission was unprecedented and anti-republican, because, under the pretence of deference to the popular will, it was intended and did prevail to prevent the possibility of a fair popular election—it clearly appearing from the schedule itself that voters were kept from the polls, not because they *would not vote*, but because they *could not vote*—because they were *not permitted* to vote either on the slavery clause, or on the main body of the constitution. 5th, That Congress ought not absolutely to reject a constitution *framed* by a legitimate convention; nor can Congress by its own authority impose upon the people of Kansas a constitution which has no sanction of adoption, either by the Convention or by the people of the Territory. But that the only means by which to assert the legitimacy of the Convention, and at the same time to avoid the fraud attempted by the Convention, and to avoid any resort to Congressional intervention in the domestic institutions of Kansas—*is to adopt the constitution, subject to a fair and legal vote of the people of Kansas—to be prescribed—not by Congress—but by the territorial Legislature*, and to admit the State under the Constitution whenever the Territory shall proclaim its approval and adoption by the people. "If they adopt it, to admit her into the Union *ipso facto;* and if they reject it, to leave the people of Kansas in their own way to organize another Convention, and to submit another Constitution to Congress for approval."

The expediency of this suggestion, I shall presently make the subject of discussion. Its consistency with the position assumed in the letter of November, is clearly apparent from the fact, that both positions admit the legitimacy of the Convention, and as concerns the rest, neither position at all conflicts with the other, since each is based upon a different position of affairs—the one upon a supposed state of things which has never occurred—the other upon the actual course of different procedure adopted by the Lecompton Convention.

As regards the constitutionality of this proposed mode of Congressional deference to territorial authority, I have already, in my first letter, called your attention to the fact, that no precedent of our governmental history at all tends to make it imperative on Congress to accept a Constitution of a territory applying for admission into the Union, if such Constitution be unsanctioned by express popular authority. The most that can be asserted for any precedent is, that it vests a discretionary power in Congress, to accept the Constitution immediately under the presumption of popular sanction, to be inferred from the legitimacy of the Convention, or to insist upon actual and express popular sanction. This view of the case sets aside, of course, the "exploded notion" that Congress may dictate, on its own authority, the form of a Constitution.

And other precedents, old and new, establish beyond controversy the authority of Congress to admit a State provisionally, and to make popular sanction of a proposed manner of admission the *sine qua non* of admission itself.

By act of Congress, of June 15th, 1836, the territory of Michigan was admitted to the Union, *upon condition* that the boundary lines described in the same act, should "receive the assent of a Convention of delegates *elected by the people of the said State*, FOR THE SOLE PURPOSE OF GIVING THE ASSENT HEREIN REQUIRED."

On the 15th December, 1836, a Convention elected by the people, for the purpose, did give the required assent. And on the 26th January, 1837, Michigan was admitted to the Union, by act of Congress.

Thus it was made a condition of the admission—not only that a Convention should assent to a proposition made by Congress, *but that such Convention should be directly authorized by a popular vote to give the required assent.*

The instance of the admission of Wisconsin is still more pertinent to our inquiry. By act of Congress of March 3d, 1847, Wisconsin was admitted to the Union, under the following provision: "That it is made and declared to be a fundamental condition of the admission of the said State of Wisconsin into the Union, that the Constitution adopted at Madison, on the 16th day of December 1846, shall be assented to by the qualified electors in the manner and at the times prescribed in the 9th section of the 20th article of the said Constitution. And as soon as such assent shall be given, the President of the United States shall announce the same by proclamation;

and therefrom, and without further proceedings on the part of Congress, the admission of said State of Wisconsin into the Union, on an equal footing in all respects whatever with the original States, shall be considered as complete."

This constitution was rejected by the people of Wisconsin, and the State was admitted to the Union, under another Constitution, by act of Congress, of May 29th, 1848.

And when the people of California applied for admission and presented a Constitution ratified by a popular vote, a very large number of the Southern people opposed the admission, and our two Virginia Senators very properly voted against it, on the ground that the Territory was not authorized by act of Congress to call a Constitutional Convention.

Again. Congress has made it a condition of the future admission of Minnesota, that that Territory shall present a Constitution ratified by a popular vote.—And the President in his annual message, has recommended that all future acts of Congress organizing Territories shall contain similar provisions. Is there any legal reason why Congress may not apply directly to Kansas the same rule applied prospectively to Minnesota?

If there is any Constitutional requirement that the authority of Congress to annex a condition to the admission of a new State, shall be exercised anterior, and shall not be exercised subsequent, to the application of a Territory for admission—then, this unheard of rule of Constitutional exposition was most palpably violated in the cases of Michigan and Wisconsin.

Further, if Congress may, as in the case of Minnesota, annex a prospective condition to admission, it may certainly insist on the fulfillment of the condition, when the Territory applies for admission. Now, in the case of Kansas, Congress did provide "to leave the people of the Territory perfectly free" in framing their Constitution "to form and regulate their domestic institutions in their own way." Thus Congress has not only renounced all pretence of authority, itself to dictate a Constitution for Kansas, but has asserted the sole right and authority of "*the people* of the Territory" to enact the same. Were the people of Kansas left "perfectly free," in the election of December 21st, to form a Constitution in their own way? Were they not *obliged* to vote *for* the Constitution if they voted at all? And when they were obliged to submit to a test oath, to support the Constitution, and vote *for* the Constitution, whatever may

have been their opinion as to its merits and demerits—when such conditions were made imperative and preliminary to a vote for or against the slavery clause—were the people left perfectly free to form and regulate even the institution of slavery in their own way? The mere statement of these questions furnishes a complete and unanswerable argument. The prospective condition contained in the Kansas act has been violated, and Congress is now requested to sanction the violation of a popular right guaranteed by its own enabling statute.

Not only is the form of procedure recommended by Governor Wise entirely constitutional; not only is it sanctioned by precedent and by principle; but there is, on the other hand, no principle and no precedent which would authorize the immediate acceptance by Congress of the Lecompton Constitution. The Convention of Kansas has not pretended to enact the Constitution. It has professedly submitted the Constitution for popular enactment, and the possibility of popular enactment has been defeated by the very method of submission.

The Constitution has been sanctioned only by an anti-Republican submission of a part of the instrument for ratification only, and not for the choice of ratification or rejection—and the equally anti-Republican submission of another part for ratification or rejection by a *minority* of the legal voters. Congress has no constitutional authority to sanction an anti-Republican mode of so-called election, and *pro tanto* to subject the people of Kansas to an anti-Republican form of government. And the doctrine is long since exploded, that Congress can dictate a Constitution to be adopted by a territory about to be admitted as a State. And these considerations unavoidably substantiate my proposition:

5th. That an immediate acceptance by Congress of the Lecompton Constitution would involve the grossest act of congressional intervention in the domestic affairs of Kansas; that it would impose upon Kansas an anti-Republican form of government, by the mere force of an unconstitutional exercise of arbitrary power.

But your apology touches lightly on the ground of principle and constitutional authority. You would justify the action of the Convention and urge its speedy endorsement by Congress, because of a supposed expediency. You argue that the Topeka men were strong enough, and obstinate enough, to have voted down the Constitution, if fairly submitted for ratification or rejection—not on account of

intrinsic demerit in the Constitution itself, but by reason of a supposed want of authority in the Convention. Your argument might have more force, were it not evident that the Topeka men were not the only class disfranchised by the Lecompton schedule; that instrument disfranchised all persons who might desire to reject the Constitution, for any motive whatever. But apart from this I would ask by what right the Convention presumed to decide who were good, and who were bad citizens? By what right could the Convention presume to decide that a certain class of citizens, who had never been disfranchised either by Judicial sentence or by Legislative enactment—would, if permitted to reject the Constitution, exercise the right for an insufficient motive? By what right did the Convention thus attempt to go behind the motives of legal voters, and to weigh the sufficiency or insufficiency of such motives? And if the Convention by inquisitorial right, was thus entitled to play father confessor to the secret motives of voters, and thereby in its penetrative wisdom discovered that it was unsafe to submit the Constitution to a full, free, fair popular vote, why was not the instrument withheld altogether from the polls? Why did the Convention resort to the farce of pretending to submit the Constitution for ratification or rejection? Why was the Constitution submitted to be voted *for*, and no man permitted to vote against it? And if the slavery clause ought to have been submitted separately or alone, why was it not thus fairly submitted? Why were legal voters, who desired to vote for or against the slavery clause, driven from the polls by a test oath, merely because they might not choose to vote *for* an instrument which they were not permitted to reject? Why was not the question of "slavery or no slavery" left to a fair decision, unembarrassed by a test oath, or by any coupling with the residue of the Constitution? There is but one possible answer. The Convention intended to perpetrate *fraud*, "shameless fraud and unveiled trickery," under the ragged guise of pretended popular election. But, in any event, how can you contend that after the Convention has agreed to submit the Constitution for ratification or rejection, thus determining that the Constitution shall be the act and deed of the people themselves, enacted by a full popular vote, and afterwards adopting a mode of submission which necessarily defeats the principle itself—absolutely preventing the enactment of the Constitution as the act and deed of the popular voice—under these circumstances, how can you contend that Congress may right-

fully interpose, under the plea of expediency, to thrust upon the people of Kansas a Constitution which they have never ratified, and which the Convention has decided shall only "take effect and be in force from and after its ratification by the people? (See section 17th of the schedule.)

Expediency! Can any real expediency arise from Congressional usurpation? Must we be taught, at this day, that it is competent for Congress to disregard the Constitutional limitation of its powers in the pursuit of expediency? Or can there be expediency attendant on the sanction of a fraud perpetrated on the freedom of election? Is it expedient for Congress to proclaim the falsehood, that the Lecompton Constitution is the act and deed of the people of Kansas, when the schedule before them denies such a possibility? But you say that the people of Kansas desire peace. Let them have peace, then, by all means. The arm of the Federal Executive is strong enough to preserve peace in Kansas. Do the Topeka men push rebellion to violent outrage? Then let military force be employed to suppress them, and let the civil power do what it should have done long ago. Let the ringleaders of rebellion be lawfully tried, condemned and punished. This will certainly preserve peace much more effectually than immediately to admit Kansas as a state, suddenly to withdraw the restraint of Federal control, at the same time to insult the people by arbitrarily thrusting a Constitution upon them, thus incensing rebellion and offering rebels a pretext for rightful insurrection, and swelling the ranks of insurrection with fair-minded men, who have no sympathy either with Topeka rebellion or Lecompton fraud. The "peace" plea is against you, sir. You must try another.

I propose, in a subsequent communication, to trace the history of the present issue, and to consider its probable effect on the interests of the South, the Democratic party and the present Administration.

A VIRGINIA DEMOCRAT.

CONCLUSION

OF A

Review of "A Review

OF

GOV. WISE'S TAMMANY LETTER,

By an Eminent Virginia Statesman."

To Charles W. Russell, Esq. of Wheeling, Virginia:

Sir,

My last letter concluded with a reference to the interests of the people of Kansas, as affected by the proposed congressional sanction of the Lecompton schedule.

There are other interests to be considered, besides those of the people of Kansas, and I am prepared to demonstrate my proposition:

6th. That the immediate acceptance by Congress of the Lecompton Constitution, would necessarily prove the severest blow to the interests of the Southern States, and to the entire Democratic party.

In every territory hereafter to be organized for future admission to the Union, the question of "slavery or no slavery" must necessarily arise, and there is no method by which it can be peaceably settled, except by strict deference to the wishes of the people of each territory. If the precedent be once established, of urging the speedy admission of a State, without reference to this criterion—then there is no check to be applied to any machination of fraud by

which a minority may obtain control of a convention, and thereby fix an odious Constitution on a majority. Fraud and force will take the place of a fair reference to popular election. The Southern slaveholder, moving with his property to a new territory, will place every slave at the mercy of an uncertain game of lawless contention. Nor is this the only disadvantage to which Southern men will thus be subjected. Southern capital is fixed capital—fixed in land and negroes—in all cases difficult of conversion or of transmission. And the South has no surplus population. On the other hand, the North wields an immense floating capital and teems with an overflowing population. The simple transaction of the negotiation of a bill of exchange on New York will immediately transfer immense sums to any point of the frontier; and thousands of men are constantly eager to borrow funds to assist their immediate emigration to any spot where labor is in high demand and bread and land are cheap. Thus, wherever slavery becomes the subject of angry contention and political intrigue, the Southern slaveholder suffers a triple disadvantage. And yet, are we to be told by Southern men, that emigrant aid societies from the North may employ men and money for limitless corruption, may intrigue in New Mexico until they obtain the control of a Convention, and then present to a pro-slavery majority a Constitution embodying an anti-slavery clause, require every legal voter to vote *for*—permit none to vote *against*—this anti-slavery Constitution, and submit another clause of the Constitution for ratification or rejection, by all voters willing to vote *for* the Constitution, and bind themselves to support it under the penalties of perjury?—and then that Congress has no authority to enquire by reference to a fair vote, whether this is not a fraud on the rights of the people of the territory—but Congress must "speedily" accept such a Constitution and endorse such a schedule? You cannot deny, sir, that this picture, the realization of which would rouse the whole Southern people to arms, affords a just parallel to the case of the Lecompton schedule. Any course of reasoning which can be adduced in favor of the one case, would equally justify the other. The case supposed is only the other side of the same theory—the same principle of "legitimacy"—the same doctrine of the absoluteness of a Convention.

No! The principle adduced is a false principle—false in theory and ruinous in practical application. There is no possibility for the extension of slavery, except by a strict adherence to right and jus-

tice, preserving the purity of election and the sanctity of popular sovereignty. Let these be uniformly regarded, and abolition agitators will lose their occupation. Northern sentiment will no longer be misled. Southern men will preserve the *prestige* attaching to justice and right—and Southern property will be peacefully extended wherever it can be profitably employed. There are but two objects to be attained by forcibly creating an unnatural antagonism between the right of slave property and the right of popular sovereignty. These objects have long been the prime desiderata of arch enemies at the North and arch traitors at the South. Each has calculated on the certainty that the right of franchise is stronger than the right of property. The object of one class is to destroy slave property; the object of the other class is to dismember the Union. Abolitionists and disunionists are employing the same means for the accomplishment of their several objects. Black Republican leaders in Congress are, at this moment, lending a feeble and unwilling support to the doctrine of popular sovereignty. During the last Presidential canvass, their whole party openly ignored it. They dare not oppose it now, for, by opposing it, they would themselves renounce the moral position of which they are striving to divest the South and the Democratic party. But they are doing all that can be done to defeat the principle by a feeble and sickly apparent endorsement. The defeat of popular sovereignty in Kansas, without their apparent concurrence, is the object most devoutly desired by all the subtile intellects which direct their machiavelian policy. The Black Republican leaders are holding back. They see, in a triumph of the Lecompton schedule, the promised defeat of the Democratic party in the next Presidential election. The Southern destructionists are earnestly looking for the same result, which they will gladly hail as the tocsin of disunion.

Each faction seeks to drive the Democratic party from its adherence to honest principle—to make *Democrats* deny the first principle of *Democracy*—to fix upon the party the disgraceful responsibility of a consummated fraud—to strip the only guardian of Southern rights and the preservation of the Union of all moral strength—to shear the locks of Samson—blind and maim the strong man with the tortures of fanaticism, and then bring him forth to mingle in the orgies of disunion.

It is by waging war on these nefarious schemes that Gov. Wise

has endeavored to fulfill his "voluntary engagement to Virginia and to the South." None but a Southern man could perform the duty effectually—none so effectually as a citizen of Virginia. But we are told that his effort was "ill-timed." When would be the proper time? If the Lecompton fraud is to be exposed—as it must be exposed sooner or later—when will the exposure beneficially affect the interests of the party and the country, if not permitted to influence the action of Congress, while the question of fraud is pending before that body? The "ill-timed" criticism is a mere evasion of the merits of the question. Not one of the critics has ventured to designate another time, or a better time, for the publication of Gov. Wise's protest against the Lecompton fraud. But you assert an "apparent incongruity" between Gov. Wise's "sentiment" and his "voluntary engagements to the President." An historical sketch of the manner in which the present issue between Governor Wise and the President has arisen, will suffice to place this matter in its proper light.

In the National Convention at Baltimore in 1852, the Virginia delegation, of which Gov. Wise was a member, voted as a unit for James Buchanan in thirty-four successive ballotings. Pennsylvania and other leading States, united with Virginia to offer Mr. Buchanan a support sufficiently strong to prevent the nomination of a rival. The opposition to Mr. Buchanan's nomination was equally obstinate, and enlisted the earnest sympathies and urgent efforts of a number of Virginia politicians outside the Convention, including a majority of the Virginia delegation in Congress. Mr. Buchanan's friends found it politic to turn their votes in favor of another candidate. Virginia led the movement by a vote for Franklin Pierce, and his nomination was the result of the combined efforts of Mr. Buchanan's friends. Thus it was, that politicians from Virginia and elsewhere, who had exhibited such a decided repugnance to Mr. Buchanan, were afterwards ranged in an unmistakable opposition to the Administration of President Pierce, which manifested itself in various forms shortly after the period of his inauguration. A Democratic paper was established at Washington, and its columns developed a course of scrutiny, questioning and open censure applied to the policy of the Administration. It was known as the organ of a number of Democratic members of both Houses of Congress. Its partisans even succeeded in defeating the organ of the Administra-

tion, and securing for the "Sentinel" the printing of the Senate. Southern men were foremost in this opposition, to a President whose every message embodied a defence of Southern Rights.

While this systematic course of opposition was pursued, other political occurrences were developed which may well be considered in connection with questions now prominent in political discussion. The Kansas-Nebraska law was enacted, Congressional authority declared its own incapacity to intervene in the decision of the question of slavery in the territories, declared that the people of each territory should be left "perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States," and finally *Congress did intervene*, with the so-called "Badger amendment," to repeal a law establishing and protecting slavery in the territories of Kansas and Nebraska. This amendment was ostensibly proposed by Mr. Badger of North Carolina. The public have not yet been informed whether that Senator was the real author of the proposal. The fact may yet be made known that Democratic Senators from the South took part in the concoction of the measure. Let members of Congress speak out. There are members from Virginia honest enough and brave enough to speak the whole truth. Who did frame the Badger amendment? Who composed the committee who considered and recommended it before or after its submission to the Senate? Whoever claims the merit or demerit of the suggestion—certain it is that Southern Democrats, Senators and Representatives co-operated to secure its insertion in the Kansas-Nebraska bill, as well as to effect its final enactment as a part of the statute. Thus Southern politicians have already sanctioned an act of Congressional intervention against slavery in the territory of Kansas. The Southern people, it may be presumed, have forgiven this. But it may be more difficult to forgive the more aggravated offence of resorting to Congressional intervention to array the right of self-government against the extension of slavery.

For nearly three years—until the month of January 1856—President Pierce was subjected continually to embarrassments resulting from the course of the Democratic members of Congress, who held themselves aloof from the administration and maintained a separate political organ of non-conformity to its policy. Suddenly the "Sentinel" was abandoned by its supporters, who began to exhibit decided indications of affiliation with the adherents of the Adminis-

tration. It was evident that a new coalition had been formed. Subsequent developments exposed the nature and intent of the alliance. The friends of President Pierce were urging his name for another nomination. Other aspirants were to be found among the late partizans of the "Sentinel." But neither division was strong enough to maintain a single-handed contest with a third powerful legion of the Democracy, the same which had effected Mr. Pierce's nomination in 1852. Neither Mr. Pierce's party nor that of his late opponents could hope to secure the nomination at Cincinnati, until by a combined effort, they should remove Mr. Buchanan's name from the list of aspirants. The necessary coalition was effected. It was so arranged that Mr. Pierce was to occupy the first position, and bear the brunt of the battle. His name was first to be proposed for nomination—if unsuccessfully—then his friends must unite with his late opponents to nominate the candidate of *their* choice. Mr. Pierce received the compliment of precedence—but the second choice had apparently the best of the bargain.

As the time for decisive action approached, an unrelenting war was waged on Mr. Buchanan. Nowhere was it fiercer than in Virginia. This is perhaps to be attributed to the fact that the Virginia politicians who led the attack were not Pierce men—but belonged to the other wing of the coalition. They were fighting ostensibly for Mr. Pierce, and he received the whole recoil of the shock. But in spite of all the appliances brought to bear, two-thirds of the Virginia delegation declared for Mr. Buchanan, and cast the whole vote of the state for his nomination, on the first and every succeeding ballot at Cincinnati. The anti-Buchanan coalition fought till hope was gone. In their desperation, some leaders even resorted to unprecedented and illegitimate modes of strategy. Certain Virginia politicians attempted an offensive alliance with the "softs" of New York—a party which, twelve months before had stood on an abolition platform. This was one means attempted of opposition to the nomination of James Buchanan. And for the accomplishment of the same object, it was openly threatened to divide the vote of Virginia, which for more than half a century has been cast as a unit.

No one is more accurately informed than yourself, as to the extent and authorship of these intrigues. And here passing notice may be taken of a matter which has not yet appeared in the public press. It will be remembered that the prompt and generous act of Senator Douglas first placed Mr. Buchanan's nomination beyond the possi-

bility of defeat. When Mr. Douglas telegraphed to his friends at Cincinnati, the request that they would combine to secure Mr. Buchanan's nomination, the intelligence came like a thunderbolt on the little faction who had determined to defeat Mr. Buchanan, by fair means or foul. It is well known, at least in Virginia, that these politcians returned from the Convention heaping bitter curses on the head of Stephen A. Douglas, and swearing that they would watch unceasingly for an opportunity of revenge. Collate these facts with the obvious fact that the quasi-Democratic press, still engaged in an insidious war on the Administration, now constantly applies the abusive epithets, "traitor" and "Black Republican," to Mr. Douglas, and it is easily perceptible that the real cause of this pretended indignation is not to be referred to his late manly efforts in favor of popular sovereignty in Kansas, but to his agency in securing the nomination of James Buchanan at Cincinnati.

Many of these malcontents with the nomination, were equally dissatisfied with the election of Mr. Buchanan, and the faction united to perpetrate as deliberate an instance of party treachery as ever was concocted by political intrigue. So called Democratic presses were established at Richmond and other points in the South. The President had hardly published his inaugural address before every inkling and indication of his policy, which could be discovered or imagined, was made the subject of hostile animadversion by these pretended organs of Democratic sentiment. The defence of the Administration was left to isolated efforts of friendly presses. There was no organized administration press—not even an organ at Washington to indicate the proper line of defence to be adopted. While the friends of the Administration were thus fighting at a disadvantage, Governor Walker was permitted to proclaim, with every possible evidence of Administrative sanction, that the President had based his Kansas policy on the broad ground of requiring the fulfillment of the letter and spirit of the Kansas act, to be consummated by a fair, full, free popular vote for the ratification or rejection of a constitution to be framed and proposed by a convention of delegates. So universal was the impression thus created, that not only the press of the malcontent Democrats, but the entire Whig and Know-Nothing press immediately seized the opportunity for a combined assault upon the administration, many of them uttering the identical sentiments expressed in the President's late message accompanying the Lecompton Constitution. All the clap trap of agitation was

resorted to, and the press of the combined opposition had partially succeeded in manufacturing a factitious semblance of popular opposition at the South, before the people had time to deliberate on the question, or the volunteer force of the administration could rally in defence of a great Democratic principle, until then undisputed.

But the administration press fought the battle effectually. In spite of every attempt to embarrass the issue, by complicating it with local questions, a few weeks sufficed to bring into contempt the open and violent assailants of the President, and shortly afterwards to silence the fire of the more dangerous, because more cautious and more insidious portion of the opposition press. Before the annual message of the President could be written, the conservative sentiment of the South was prepared to discountenance every fraudulent attempt to pervert popular election in Kansas. Among candid and well informed men, there can be no question, that had the President immediately condemned the fraud perpetrated at Lecompton, he would have carried with him, not only every Northern Democratic vote in Congress, but also a majority of the Southern Democratic votes.

But the annual message took no decisive ground. Many friends and all the foes of the Administration interpreted it, indeed, as a virtual endorsement of the Lecompton schedule. Other friends of the Administration regarded it as a temporary non-committal. Those friends at the South, who had actively engaged in, or cheerfully applauded the battle for popular sovereignty, fought in defence of the Administration, could not be induced to believe that the President had made the endorsement of the schedule a test-measure of his Administrative policy. They justly regarded such a policy as calculated to drive into opposition the mass of the Northern Democracy; and to afford, at least, an apparent triumph to the assailants of the Administration. But the enemies of the President already boasted of the triumph, and left no opportunity unimproved to estrange from the Administration every Democrat who refused to endorse the Lecompton schedule. And while it was thus attempted to drive the Northern Democracy into opposition on the Kansas question, the fillibustering question was made a pretext to array Southern Democrats in similar hostility.

Such was the political juncture which called forth Gov. Wise's letter of December 30. That letter was directed against an opposition party who were insidiously endeavoring to wreck the Admin-

istration, and the Democratic party, on the endorsement by Congress of a political fraud.

Thus, in my several communications addressed to yourself, I have endeavored to discuss separately and fairly, each of the questions suggested by the political issue now pending, as well as by the position assumed by Gov. Wise with relation to the subject. I am aware that the manner in which I have treated the subject has necessarily occasioned much repetition. Such was my design. I know of no better manner by which to justify Gov. Wise, or to expose the Lecompton fraud before the people of Virginia, than to discuss the whole subject under every phase in which it has been presented for my consideration. But there is one master-key to every problem involved. Fraud is patent on the face of the Lecompton schedule itself. I again quote for your attentive perusal the very language of the instrument.

"Section 11. *Before this Constitution shall be sent to Congress for admission into the Union as a State, it shall be submitted to all the white male inhabitants of this Territory for approval or disapproval*, as follows: The President of this Convention shall, by proclamation, declare that on the 21st day of December, 1857, at the different election precincts now established by law, or which may be established as herein provided, *an* ELECTION *shall be held*, over which shall preside three judges, or a majority of three, to be appointed as follows: The President of this Convention shall appoint three Commissioners in each county in the Territory, whose duty it shall be to appoint three judges of election in the several precincts of their respective counties, *at which election the Constitution framed by this Convention shall be submitted to all the white male inhabitants of the Territory of Kansas in the said Territory upon that day, and over the age of twenty-one years, for ratification or* REJECTION IN THE FOLLOWING MANNER AND FORM: The voting shall be by ballot. The judges of said election shall cause to be kept two poll books by two clerks by them appointed. *The ballots cast at said election shall be endorsed* "CONSTITUTION *with slavery*" and "CONSTITUTION *with no slavery*." One of the said poll books shall be returned within eight days, to the President of this Convention, and the other shall be retained by the judges of election, and kept open for inspection. The President and two or more members of this Convention shall examine said poll books, and *if it shall appear upon said examination that a majority*

of the legal votes cast at said election be IN FAVOR OF THE CONSTITUTION *with slavery, he shall immediately have the same transmitted to the Congress of the United States as hereinbefore provided. But if, upon such examination of said poll books, it shall appear that a majority of the legal votes cast at said election be* IN FAVOR OF THE "CONSTITUTION *with no slavery,*" then the article providing for slavery shall be stricken from the Constitution by the President of this Convention, and no slavery shall exist in the State of Kansas, except that the right of property in slaves now in this Territory, shall in no manner be interfered with, and shall have transmitted *the Constitution* so *ratified* to the Congress of the United States as hereinbefore provided." * * * *

"Sec. 14. Every person offering to vote at the aforesaid election upon said Constitution shall, if challenged, *take an oath* to support the Constitution of the United States, *and to support this Constitution, if adopted, under the penalties of perjury under the territorial laws.*"

Now, sir, with this schedule before you, I beg that you will prepare, for yourself at least, frank and direct answers to the following questions: Does not this schedule first provide that *the Constitution* shall be submitted to *all* the white male inhabitants of Kansas, over twenty-one years of age, for *ratification or* REJECTION? Does it not then provide a mode of submission which renders REJECTION of the Constitution impossible? Does not the same mode of submission disfranchise every legal voter who will not agree to vote *for* the Constitution? Does it not equally exclude all such voters from voting *either for or against* the slavery clause? Does it not impose an unprecedented and unfair restriction on the freedom of election, by excluding from the polls all persons who are not willing to take an oath, under the penalties of perjury to support a Constitution proposed for their ratification? Can a ratification, thus effected, of a Constitution, be properly considered a ratification at all? Does not the mode of submission entirely remove the decision of the slavery question from the control of a majority of all the legal voters, and subject it to the control of a mere majority of such voters as are willing to vote *for* the Constitution? Has not the Convention, then, uttered a palpable falsehood in declaring that the Constitution, or any part of the same, was to be submitted for ratification or rejection by all the legal voters of Kansas? Is not the pretended mode of submission thus adopted a fraudulent evasion of

the freedom and fairness of popular election? Does it not constitute an anti-republican mode of constitutional adoption? Does not all this appear on the face of the schedule itself? Is it not, therefore, unnecessary for Congress to look behind or beyond the schedule for evidence that the accompanying Constitution is not and cannot be the act and deed of the people of Kansas, either directly or through the legitimate act of an authorized agent?

When you shall be prepared to answer each and all of these questions with a satisfactory negative, then, and not until then, you may be able to substantiate the crimination which you have so hastily applied to Governor Wise's unofficial conduct.

A VIRGINIA DEMOCRAT.

LETTER

OF

GOVERNOR WISE

TO THE

PHILADELPHIA ANTI-LECOMPTON MEETING.

RICHMOND, FEBRUARY 6, 1858.

GENTLEMEN,

In reply to your telegraph, received this morning, I have said that I cannot attend the mass meeting of the Democracy of Philadelphia, proposed to be held on Monday evening next. And I have hardly time to respond to your letter, since received, and the request to present my views on the question of the admission of Kansas, as a State of this Union, under the Lecompton Constitution, as presented to Congress by the President of the United States. For the last seventeen years I have been advocating the nomination of James Buchanan for the Presidency; for more than twenty years I have been his warm, personal friend; and I am as responsible, perhaps, as any other man in the United States for his election, and as deeply anxious as any other person that his Administration shall be successful, and above all, be worthy of confidence and respect. Our personal relations are as nothing compared to the importance of supporting his Administration on questions of mere expediency, and where it is based in its action on moral and legal right. But personal and administrative relations combined are as nothing, on the other hand, compared with great fundamental, moral and political principles involved in the issues now presented to the country in the

question of admitting Kansas under the Constitution, now presented *as the act and deed of her people, and as an instrument republican in form.*

These are the two issues now pending before Congress:

1st. Is the Lecompton Constitution the act and deed of the people of Kansas?

2d. Is it republican in form?

These are the only two essential issues to be tried. And with a view to a full, fair, and friendly verdict as to the fact, and judgment as to the law of the case, I have carefully, patiently, and repeatedly read the President's message of the 2d inst., in which he recommends the speedy approval by Congress of the Lecompton Constitution, and the reception of Kansas under it, as a State into the Union. I regret to say that the earnest, honest convictions of my mind constrain me to differ from the President of my choice, and to declare I cannot endorse the Lecompton Constitution as the act and deed of the sovereign people, whose act and deed it professes to be, and that I protest against the mode in which it was pretended to be submitted to the people, as anti-republican and oppressive, and offensive to the self respect and moral sense of a free people.

These convictions of mine have been deliberately formed, and I mean calmly to maintain them, reasoning with friends, and not backing from foes, though I stand alone against a host. I propose a rapid review of the message of the President; but before doing so, it is proper to recur to antecedent facts which settled certain points of principle which are now the tests of truth and argument in the case.

Prior to the act to organize the Territories of Kansas and Nebraska, the course of Government had been to regulate by Congress the mode and manner of application by new States for admission into the Union. And the Missouri Compromise had existed from 1819–'20, recognising intervention by Congress in a way deemed unconstitutional and highly obnoxious to the slaveholding States. The former act made a revolution in territorial policy which is striking in three particulars:

1st. It repealed the Missouri Compromise, and established the principle of *non-intervention* by Congress with *slavery* in the States and Territories.

2d. It declared for the people of Territories popular sovereignty and self government, by "leaving them *perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States.*"

3d. It repealed the territorial laws of Louisiana, existing previously to 1820, protecting and establishing slavery.

Thus, if any thing new, if any thing valuable, was established by this act, it was *non-intervention* by Congress with *slavery* in the States and Territories; and, above all, the "perfect" freedom of the *people* of those Territories to *form* and *regulate* not one, but all *their domestic institutions in their own way*, subordinate only to the supreme law of the Union. They were to be trammelled by no views of expediency of the Federal Government or any of its departments; but the people for themselves were to form and regulate their own affairs in their own way, subject only to the Constitution of the United States. Popular sovereignty and the right of self government in the people of Kansas, then, is not an open question now. It was closed by the positive enactment of this act, declaratory of their rights. True, the people were, of course, to exercise this sovereignty of self government in a practical and usual mode. They were not left to primary assemblies, to mobs, or aggregate meetings. The American mode of self goverment is by conventional, representative or municipal bodies. But all these bodies are but agents, servants, and representatives. When they "form and regulate," they still form and regulate for the people, and not for themselves. Their acts, at last, are but the acts of the people, and their deeds but the deeds of the people. When, therefore, a Convention sends a Constitution to Congress to be approved, as it goes up *not* as *their* act and deed, but as the act and deed of the people, done and performed by them as their agents; the question, then, is always—not whether the act and deed is the act and deed of a Convention, but is it the act and deed of the people? and this, no matter whether the instrument goes up from the Convention proclaiming, or from the ballot box of the people voting it. By the very Kansas act itself, it is obliged to be the act and deed of the people—theirs, and none others—whether it proceeds from them directly, or through their representatives.

And, for these reasons, I had no difficulty in determining that the act of 1854, the Kansas and Nebraska law, was an "*enabling act.*" It created no right not pre-existing—for popular sovereignty is self existing—but declared and admitted and recognized in the people the right of self government, to form and regulate all their domestic institutions in their own way, consistent with paramount law.

Under this law they were formed into an organized Territory; and under the territorial law they formed a Convention to make a Con-

stitution of State Government, with a view to admission into the Union. All this was legitimate; and, as to how the election of members to the Convention should be held, and how contested elections were to be determined—all matters of this sort were left to themselves, without the right of intervention from any quarter. I avoid enquiring into the frauds which may have been perpetrated, and which, doubtless, were perpetrated, on both sides, in this election to constitute a Convention.

But, that body, however legitimate, or however fairly or unfairly constituted, was *not* empowered to make a Constitution and to proclaim it, without submitting it to the people before it was submitted to Congress as the act and deed of the people of Kansas. And herein is the first point of difference with the President. He says that if the Convention was not prohibited from proclaiming it without submission to the people, they had authority to proclaim it. I say that it is a settled Democratic principle of American institutions "*that the powers not delegated by the people are reserved to them.*" But this point of difference does not arise in this case; for, as I will show presently, whatever power the Convention had in this respect, they did not pretend to exercise it, or to claim it; but, as a represetative body and not a primary, submitted the work of their agency, the Constitution, to their principals, the people.

In my letter dated the 19th of November, addressed to the editors of the *Richmond Enquirer*, I took the ground that there was no authority delegated by the people to the Convention of Kansas to proclaim a Constitution without submitting it to the people for ratification or rejection by them; "yet," said that, "if upon precedent, the Coveution of Kansas adopted a republican form of State government, and reported it to Congress, *without submitting it to the people*," I agreed in accepting it, and in receiving Kansas as a State, "slave or free, into the Union." This letter was written on the 19th of November 1857, and on the 24th of the same month, five days afterwards, I saw for the first time, published in the *Richmond Enquirer*, the schedule of the Lecompton Constitution.

The publication of this document presented the subject under a new phase, adverted to by the President in his message of December 1857. The result of the election in Kansas had still to be ascertained, and certainly it could not be clearly said what were the President's *conclusions* on the affairs of that Territory. His *argument* fairly admitted and claimed for the people the right of passing on

the work of the Convention, and his conclusion seemed to be reserved. His counsel was not "dark," or double," or dubious; but he was uncommitted to any practical conclusion by his December message, and I supposed that the friends of the Administration would be left free to take ground according to their conscientious convictions, on a full development of the whole subject.

More than a month had elapsed since the publication of the schedule. I had full time to understand the provisions of this submission to the people, and was prepared to take the grounds occupied in my letter to the Tammany Society, dated the 30th December last.

That letter was deliberately written, was kept in my possession for days, was re-written, and put forth with a firm purpose to serve the Administration and the country. I saw a formidable opposition, thoroughly organized, in the Democratic ranks, of those opposed to Mr. Buchanan's nomination, bent on driving from his support every Northern Democrat on the Kansas question, and every Southern Democrat on the fillibustering Puenta Arenas question. I saw a faction of extremists who are bent on rushing the South, slavery, Democracy and the Union, on the very bosses of the buckler of popular sovereignty, and upon the moral sense of the whole country, and losing the moral prestige of a minority of the Union who are demanding justice and equality, by denying justice and equality to a majority against a minority of people in Kansas. I felt that I might interpose a timely blow to save the Administration from the dilemma of holding its Northern friends to the hard necessity of denying popular sovereignty, and of withholding justice and equality from the people at the polls, in a Territory where self-government and perfect freedom of election were guarantied by the very act organizing it. No Northern man could strike that blow with effect, and I felt the moral obligation to strike it for "justice, even to my own hurt." I saw what would be the effect upon me, personally; that misrepresentation and abuse would follow, and many of my best friends would condemn the apparent rashness of the act. In all this I have not been disappointed. But now that the thunders have rolled over my head, and I see the full effect, even beyond my anticipations—the effect of the special message of the President—his authority wielded against the position which I devotedly assumed for his defence—I calmly survey the subject again, and, instead of retreating, advance on the position I have assumed. In November I said that if the Convention had proclaimed the Lecompton Con-

stitution without submitting it at all to the people, I would accept it as a legitimate and *de facto* instrument. But now that it has been submitted in the manner and form of the eleventh and fourteenth sections of its schedule, I repeat the position of my Tammany letter, and would adopt it only subject to a fair and legal vote of the people of Kansas, to be prescribed by their Territorial Legislature—not by Congress.

In reviewing the message I pass over all that is said respecting the rebellion and usurpation of the Topekaites. Their course has been violent and unlawful in the extreme. I claim, on the other hand, that their opponents in Kansas have acted under lawful authority; that they have proceeded under the act of Congress and of territorial organization, and that up to the point of the schedule of submission of the Lecompton Constitution to the people, their acts were *de jure* and *de facto* rightful in the legitimate sense. But what has that to do, legally or logically, with the issue?—Is the Lecompton Constitution the act and deed of the people?—Is its schedule Republican?

If insurrection and rebellion were arraying themselves against law and order in a Territory, all I can say is that they ought to have been arrested and punished long ago by the Federal Executive of the United States. When the whiskey insurrection broke out in Pennsylvania, would it have authorized a lawful Convention in that State to have submitted a Constitution to the people in such a schedule as allowed men to vote *for* it, but not *against* it; as allowed one man to vote down 1,000 men, all having equal rights; as pretended to submit one question alone, and yet submitted it in such a way, that in order to vote for or against *that*, the people were obliged to vote *for* and *not against* something else which might be obnoxious or odious to them; as insulted and oppressed them with a *test oath*, the most odious instrument of tyranny, to support a Constitution, if adopted, *before it was adopted*, and then, after being forced to gulp the oath in order to vote at all, to have the vote not counted, because it was against and not for what he was sworn to support, if adopted against his will? No. Gen. Washington put down the insurrection, and he would have made it no excuse for fraud, injustice, inequality, or oppression on the part of others who were acting under the color of lawful authority. So the Topekaites ought to have been made to submit to lawful authority; but no one can contend that they forfeited their elective franchise or their freedom of choice to disap-

prove or approve, to ratify or reject, an organic law when submitted to them. But were Topekaites alone opposed to the Lecompton Constitution? No. Some pro-slavery men were opposed to it, and this schedule deprived them of their sovereign rights as well as the Topekaites. Law-abiding citizens, as well as rebels, were compelled to vote for and not against this Constitution, or not to vote at all. The wrong of the Topekaites will not justify the wrong of the Lecompton Convention, nor cure the defects of the Lecompton schedule. What is that schedule?

Its 11th section reads:

"Before *this Constitution* shall be sent to Congress for admission into the Union as a State, *it* shall be submitted to all the white male inhabitants of this Territory, for *approval* or *disapproval*, as follows: The President of this Convention shall, by proclamation, declare that on the 21st day of December 1857, at the different election precincts now established by law, or which may be established as herein provided, in the Territory of Kansas, an election shall be held, over which shall preside three judges, or a majority of three, to be appointed as follows: The president of this Convention shall appoint three commissioners in each county in the Territory, whose duty it shall be to appoint three judges of election in the several precincts of their respective counties, at which election *the Constitution framed by this Convention* shall be submitted to all the white male inhabitants of the Territory of Kansas in the said Territory upon that day, and over the age of twenty-one years, for *ratification* or *rejection*, in the following manner and form," &c.

Now, it must surely be admitted, that is a plain submission of the *whole* Constitution framed by the Convention. The submission of the whole Constitution is repeated twice in this clause, in a way not to be mistaken. And yet is it not strange that Mr. Buchanan should have made the mistake of saying in his message that the whole of the Lecompton Constitution was not, and that a part, the slavery clause alone, was submitted to the people? Will it be said in reply that the whole was submitted only *sub modo*, after a specified manner and form? Well, let us look at the manner and form. The manner and form is:

"The voting shall be by ballot. The judges of said election shall cause to be kept, two poll books by two clerks, by them appointed. The ballots cast at said election shall be endorsed '*Constitution with Slavery*," and '*Constitution with no Slavery*," &c. There is no other

form touching this point but this; and is it not plain, still, that the whole Constitution *was* submitted by the form as well as by the preceding clause embodying the principle of entire submission? The whole was submitted in *form* as well as substance, but the *form* of submission was made to contradict the principle of submission. The principle was submission of the whole for "*approval* or *disapproval*," for "*ratification* or *rejection*," but the form was for "approval" and "ratification" alone, and there was *no form* for "*disapproval*" or "*rejection.*"

Is it answered that this was in substance but a submission of a part, for there was a form approving or disapproving, ratifying or rejecting slavery? I beg pardon, and won't repeat that it was an odious discrimination to me to allow *slavery* alone to be disapproved and rejected, and nothing else. But, passing that by, is it not plain, I reply, that no one was allowed to vote for or against slavery, a part, unless he would also vote *for* the Constitution, the whole of it, without exception? Any one might vote to reject or to adopt slavery, provided he would vote to adopt the Constitution, and no one was allowed to vote for or against slavery who did not vote for the whole Constitution. Is it not plain, then, that the object was not to submit a part only, but to force the adoption of the whole?

The whole was not fairly submitted. One thousand voters went to the polls; nine hundred and ninety-nine might desire to vote against the Constitution, and one for it; the one would be counted, and the nine hundred and ninety-nine would not be counted.

The part as to slavery, which was submitted for alternate voting, for and against, was not fairly submitted. One thousand pro-slavery men might go to the polls, desiring to vote for slavery, but against the Constitution, their votes could not be counted, and *one* free-soiler, who voted for the Constitution and against slavery, would be counted, and overcome the nine hundred and ninety-nine. It is idle to say that this was as fair for the one side as the other; for, though this be equally true as to the nine hundred and ninety-nine free-soil voters against the one pro-slavery voter, yet this would only prove the case to be one of a double instead of a single injustice. It proves only it was a wrong, injuriously affecting both sides and the whole people, and not a part only.

The truth is, there was obviously a sinister and anti-republican purpose in thus giving an unfair election as to a part, coupled with no election as to the whole. It was to force the people to adopt the

Constitution framed by the Convention. No man was allowed to vote *for* slavery who did not also vote for the Constitution; and no man was allowed to vote against slavery who did not vote for the Constitution. He might reject slavery or adopt it, provided he would vote for the Constitution; and if he voted against the Constitution, his vote for or against slavery was not allowed to be counted.

This was not all. The 14th section is worse than the iniquity of the 11th:

"Section 14th. Every person offering to vote at the aforesaid election, upon the said Constitution, shall, if challenged, take an oath to support the Constitution of the United States, and to support this Constitution, if adopted, under the penalties of perjury under the territorial laws."

The Democratic party had just come out of a severe and doubtful conflict with the Know-Nothing secret society, the most odious feature of which was a "*test oath*." Now, behold an honest, peaceful, law-abiding citizen approaching the polls in Kansas under this schedule; I imagine myself an ultra Southern slaveholder put to the ordeal of a challenge under this clause of the schedule; I am anxious, very anxious, to record my vote for my right to hold the chief part of the little property I own; I am told that I have the right, by the grant of the high Lecompton Convention, to vote for or against property in slaves; I approach the polls to exercise the right; I am challenged; the Bible is held out to me to swear first to "support the Constitution of the United States;" I ask why impose on me that oath? I urge that the obligation is binding on me without the oath—that I love and obey the Constitution of the United States, and that it is made the supreme law of the land, binding of itself—but being willing to support that instrument, and anxious to vote for my property, I assent to swear to support it. But I am told I must, in the second place, swear also to support the Lecompton "Constitution, if adopted, under the penalties of perjury under the territorial laws." I redden into wrath under the insult of such an oath tendered to a freeman at the polls—to support a Constitution, if adopted, *before its adoption!* I denounce the obstacle to my freedom of election. It is in vain; I must take it or leave my property unprotected. I suppose—the supposition is almost intolerable—I take the oath; I am then, and then only, granted the privilege of voting. I vote *for slavery, but against the*

Constitution. I am then told that my vote cannot be counted, yet I am sworn to support, if adopted, what I have voted against! Stung by insult, and then disfranchised, I go away maddened to violence by injustice, inequality and insult added to injury! Is that my act and deed? Is that republican? If Caligula was a tyrant for posting laws too high to be read by the Roman people, what does this deserve to be called, which puts the whole and a part together, so that a minority *for* the whole may prevail over a majority for or against the part? Is it not the very hocus pocus and legerdemain of keeping the promise to the ear of the people and breaking it to their hopes? I tell you that no proud, free people will stand insult and outrage like this, and such despotism is enough to drive peaceful and good citizens to violence for a redress of grievances. But the question is not whether the Lecompton Constitution has been opposed unlawfully, but is it the act and deed of the sovereign people, whose it purports to be—and is it republican in its submission by the schedule of the Lecompton Constitution? And mark, too, that this test oath is applied when the Constitution is to be sent to Congress from a territory for approval. After taking this oath, the casuist may determine whether he could, if the Constitution be adopted, oppose it before Congress, though he voted against it at the polls.

But it is urged in the message that the people, if opposed to slavery, might have voted it out of the Constitution on the 21st December. I deny that they could have voted for or against slavery under this schedule, unless they voted *also for the Constitution.* As I have said, nine hundred and ninety-nine might have gone to the polls and voted for or against slavery, and yet have been out voted by *one man*, if they voted *against* the Constitution and the one voted *for it.* In a word, no one who voted against the Constitution could vote at all. How unfair, then, to urge that those who were opposed to the Constitution, though for or against slavery, staid away from the polls on the 21st December, and let the election go by default? *Could* they have *voted at all* if they were *against* the Constitution? Could they be counted for or against slavery, unless they voted for the Constitution? Why hold the people responsible for not attending the polls, when, if they had attended them, they were not allowed to vote but in one way, not all allowed to vote their own way, and the minority of one was given the majority of one over a thousand? Do you call this *election?* Election has which of the

two "at least to choose." But here there was no alternative but in respect to slavery, and that was not allowed unless you voted the one way on the Constitution. Such monstrous injustice and inequality never offended the moral sense of freemen before in this country. I cannot agree with the President, therefore, when he says: "It is impossible that any people could have proceeded with more regularity in the formation of a Constitution than the people of Kansas have done." The people of Kansas have not been allowed to hold a fair, free and full election at all, though the whole Constitution was pretended to be submitted to them. No; not upon the part which the President says was alone submitted to them.

You see, gentlemen, that I arrive at these facts from the face of the record—from the schedule itself. I don't go into Kansas for evidences of fraud or any other fact. I don't go behind the schedule which is annexed to the Lecompton Constitution itself. It shows on its face a fact stronger than any proof, that the people *did* not vote—it shows that it was *impossible* for them to vote their sovereign will in a fair, free, and full election. Such an election cannot possibly be held under such a schedule. This Congress is bound to look at. I am bound in certain cases to cause the seal of this State to be affixed to papers for the purpose of authentication. I have no election. If the paper is proper to be certified, I must affix the seal. But suppose that in the act of authentication, by affixing the seal, it appears to me that there is a doubt even whether the paper is the act and deed of the party whose act and deed it purports to be. Must I not enquire whether it be the act and deed of the party? If I affix authentication to what is not his, I may do him irreparable damage. But suppose that it appears on the face of the paper itself that it *couldn't* be his act and deed—that he was not left a free agent—am I bound to certify that to be his act and deed, which not only is not, but could not be his act and deed? Now, as I said in November, if the Convention had proclaimed this Constitution, and sent it to Congress, *without submitting it at all to the people*, then Congress would have had simply the evidence of the Convention, the representative and agent, that this was the authorized instrument of their principals—the people. The evidence to the contrary wouldn't have appeared in the record and on the return itself. And we wouldn't have been authorized, if you please to go

behind the return of the Convention, or to have taken evidence *aliunde*, or admitted a plea to matter *dehors* the record. But the Lecompton Convention submitted their Constitution to popular approval or disapproval, ratification or rejection. It purports to be the act of the people—not of the Convention only, but of the people also. The Convention did not fully and finally adopt it, and this schedule shows that the people did not, because they could not as it was proposed. It is, then, neither the act of the Convention nor of the people. It is, in fact, adopted by neither, and couldn't be by the latter.

If Congress receives and ddopts it as a State Constitution for Kansas under these circumstances, will not Congress be *intervening* to impose a Constitution upon a people which is not theirs? Will they not arbitrarily intervene to decide a question which belongs to the people of Kansas alone—to all and all alike allowed by law to vote? Have all and all alike been allowed to vote? Were those who did vote allowed to vote *against* the Constitution as well as *for it?*

We are told that we are to shut our eyes to the record. What evidence have we, then, that it is a Constitution at all? We are told, then, that this is *not the time* to raise the question, *de facto*, whether it is the act and deed of the people of Kansas. When would be the time, when was the time, if it be not the time now, to enquire whether this is a genuine Constitution of the people of Kansas, and whether it is or is not republican, when these, and these only, are the questions before Congress?

Why, it is asked, has the issue of fact been delayed so long? I answer, how could the issue be made up before the returns were made, and the evidence appeared on the record submitted to Congress?

Ah! but we are told that it is *inexpedient* to raise this question at all; that expediency requires Congress to decide the question. When was it morally determined that the policy of this nation should be governed by expediency rather than by justice or right? But what right has Congress to set up its decrees of expediency over and above the sovereign rights of a people to free and fair election? Is expediency to be carried so far as to allow Congress to intervene so as to set its will over the will of the people of Kansas, or to substitute its will for theirs, and to give a minority Con-

stitution to a majority? This would be intervention with a vengeance, in the teeth of non-intervention, so much exclaimed for by those who advocate this Constitution!

But the President offers an inducement to the anti-slavery party in Kansas by saying: "If a majority of them" (the people of Kansas) "desired to abolish domestic slavery within the State there is no other possible mode by which this can be effected so speedily, as by prompt admission." This hint is somewhat dangerous in point of policy. It cuts both ways. It might be asked whether this commends itself to pro-slavery gentlemen who are advocating the "prompt admission." Some of them once repealed laws protecting and establishing slavery in Kansas. They had better not make it too apparent in the South that "prompt admission" would most speedily unmake the slavery there which was restored by the Dred Scott decision. But this was not the President's fair meaning. He meant to say only that it was in his opinion the speediest way to obtain a fair vote by the people.

In other words, Congress is to do a thing in order that it may be immediately undone! Why do it to be undone? Is Congress to give the Territory a Constitution obnoxious to a majority in order that that majority may have State sovereignty to put it to the tortures of its indignation? Why not rather allow the sovereign people directly and at once to select for themselve the form of government they prefer, instead of submitting to their passions an instrument which the argument admits they abhor? Would it be less trouble, or take less time, to refer the matter back to their decision, and to avoid the issues which might and would arise under an adopted and admitted Constitution which undertakes to bind the sovereignty of the people not to change their form of government before Anno Domini 1864? By authenticating this instrument by the arbitrary intervention of Congress, every sort of question of vested right and of bounden sovereignty would arise. By "leaving the people perfectly free to elect their own form of government in their own way, without fear, force, fraud or intervention, those issues and worse would be avoided. The agitation in Kansas would be intense, to adopt this Lecompton instrument, and the excitement there would be roused in a new and more fearful form than ever, and remain still in Congress, the Cabinet, and the country universally. I proposed, on the contrary, in my Tammany letter, that Congress should not decide the question of fact, but refer it back to

the *Territorial Legislature* for submission under territorial law, to the whole of the legal voters, under a fair, free and full election. This was done both in the case of Wisconsin and of Michigan, under cases involving the principle of this case of reference and submission. This imposes no condition of admission, but receives the State into the Union provisionally—provided only that the Constitution is the will of the people fairly and legally polled.

And why impose this Constitution of a minority on a majority? *Cui bono?* Does any Southern man imagine that this is a practicable or sufferable way of making a slave State? Who believes now that Kansas will be made a slave State, or kept one for any time, by the admission of this Constitution? Who will carry a slave there now to become a bone of contention in a border war? the sport of violence and fraud and force like that which has so long endangered person and property, and political franchise, in that unhappy battle-ground of sectional feuds? To what end is this to be done, if speedily it is to be undone with State authority, created to drive slave property from the Territory?

We have proudly, heretofore, contended only for equality and justice; but if this be wantonly done without winning a stake—the power of a slave State thereby—it will be worse than vain. It will be snatching power *per fas aut nefas*, to be lost "speedily" with the loss of something of far more worth than political votes—*our moral prestige*. If we are not willing to do justice, we can't ask for justice; if we can't agree to equality, we must expect to be denied it. It is our bull goring the anti-slavery ox. Suppose we had had a majority of slaveholders in that Territory; suppose a minority of abolitionists had gotten the census and registry into their hands and had kept fifteen out of thirty-four counties out of the Convention; suppose they had formed a Constitution with a clause prohibiting slavery, and had sent it to Congress without submitting it to a majority of the legal voters; or suppose they had submitted all parts of the Constitution to the popular vote, *except the one* clause prohibiting slavery, knowing it would be voted down if submitted to the majority of the people; suppose such a "boot on the other leg" had been submitted to Congress, and we had then heard the absoluteness of a Convention contended for by Black Republicans, demanding of Congress to sustain the doctrine of "*legitimacy*." I tell you that every Southern man would have been in arms and would be roused to the shedding of blood, rather than submit to Congress, fastening

upon a majority of pro-slavery people an arbitrary rescript of a mere Convention, unauthorized to proclaim its Constitution without an express grant. This is the same principle, accompanied by trickery and fraud. "We are willing to do unto others as we would have them do unto us." The Southern people ask for no injustice, no inequality.

We are told that "prompt admission" of Kansas as a State, will end the agitation in Congress and localize it in Kansas. What is the Kansas question? Is it local to Kansas? No. It never can be local again. It has pervaded all places and all classes in our country. Let Congress endorse this schedule of legerdemain, let the South insist on it, let the Northern Democracy be required to consent to the injustice, and the precedent becomes of universal application and citation against us for all time. Not only will the example plead, but it will be a plea in continuous cases of similar import and danger, rising successively as long as our vast territories to the Pacific shall be filling up. It comes up again and again, every year, from territories extending from Mesilla Valley to Dacotah. Flatter not ourselves, then, that any mode of adjustment will do because it is the "speediest" for Kansas. It is all essential that the settlement shall be just and right and equal. If not it is sure to be mischievous to that party which has snatched power without right, and done wrong that good may come of it. To do justice is always the best policy. If all would "demand only what is right and submit to nothing that is wrong," injustice and oppression could never be perpetrated or tolerated.

The ulterior effects of adopting the Lecompton Constitution, with its schedule annexed, will be worse than referring back the question to the Territorial decision. It will arraign this administration and the Democracy and the South for demanding more than its right, and for forcing resistance to wrong. It will be jagging the lion of a majority whilst the hand of a minority is in its mouth. It will return the chalice to our own lips when the Kansas question again and again arises in North Texas, in New Mexico, in Mesilla Valley, and in all our boundless domain of unsettled and fast settling territory. It will drive from us thousands of honest Democrats in the North, who can willingly stand by us for justice and equality, but who must leave us when we demand more and refuse justice and equality to others. It will raise the Black Republican flag over the capitol in the next struggle for power, and that, then will raise the

last dread issue of union or disunion! Are not some aiming to drive us to such extremities as will raise that issue past being laid?

For my part, gentlemen, I address you as the friend of Mr. Buchanan and his Administration. They have my best wishes and warmest friendship, and I would save both from danger and defeat. I trust in their pure and patriotic motives, but I regard much more the Democracy, the South, and the Union, and I am anxious for their fate. As for myself, I fear nothing when firmly standing on the right, in spite of friends and foes.

I received your letter yesterday morning, and have written this in great haste, to be in time for the mail this evening. You will please see that it is correctly published. I have not time to revise and condense it.

Very truly yours,

HENRY A. WISE.

JOHN W. FORNEY, DAVID WEBSTER, DANIEL DOUGHERTY,
E. G. WEBB, ESQRS. Committee.

LETTER

OF

GOVERNOR WISE

TO

THE CENTRAL COMMITTEE

OF THE

DEMOCRATIC PARTY OF ILLINOIS.

RICHMOND, Va., Oct. 13, 1858.

Dear Sir,

I cannot express to you the emotions of my bosom, excited by your appeal to me for aid in the warm contest which your noble Democracy is waging with abolitionism. Every impulse prompts me to rush to your side. Your position is a grand one, and in some respects unexampled. In the face of doubt and distrust attempted to be thrown upon your Democracy and its gallant leader by the pretext of pretenders that you were giving aid and comfort to the arch enemy of our country's peace and safety and our party integrity, I see you standing alone, isolated by a tyrannical proscription, which would, alike foolishly and wickedly, lop off one of the most vigorous limbs of National Democracy—the limb of glorious Illinois! I see you, in spite of this imputation, firmly fronting the foe, and battling to maintain:—

Conservative nationality against embittered and implacable sectionalism;

Constitutional rights, operating *proprio vigore*, and every way against all unequal and unjust Federal or Territorial Legislation.

The right of the people to govern themselves against all force or fraud;

The right of the sovereign people to look *at* the "returns" and *behind* the "returns" of all their representative bodies, agents, trustees or servants;

The responsibility of all governors, representatives, trustees, agents, and servants to the principals, the people, who are "the governed" and the source of all political power;

Utter opposition to the detestable doctrine of the absolutism of Conventions to prescribe and proclaim fundamental forms of government, at their will, without submission to the sovereign people—a doctrine fit only for slaves, and claimed only by legitimists and despots of the Old World;

Powers of any sort, not expressly delegated to any man, or body of men, are expressly "reserved to the people;"

No *absolute* or dictatorial authority in representative bodies;

The representative principle as claiming submission and obedience to the will of the constituents;

The sovereignty of the organized people, supreme above all mere representative bodies, Conventions or Legislatures, to decide, vote upon, and determine what shall be their supreme law;

Justice and equality between States and their citizens, and between voters to elect their agents and representatives, and to ratify or reject any proposed system of government;

Submission to the Constitution and laws of the Federal Union, and strict observance of all the rights of the States and their citizens, but resistance to the dictation or bribes of Congress, or any other power to yield the inalienable right of self-government;

Protection in the Territories and every where to all rights of persons and of property, in accordance with the rights of the States, and with the Constitution and Laws of the Union;

Equity and uniformity in the mode of admitting new States into the Union, making the same rules and ratios to apply to all alike;

The rejection of all compromises, conditions, or terms which would discriminate between forms of republican constitutions, admitting one with one number of population and requiring three times that number for another form equally republican;

The great law of settlement of the public domain of the United

States, free, equal and just, never to be "temporized" or "localized" by temporary or partial expedients, but to be adjusted by permanent, uniform, and universal rules of right and justice.

Maintaining these and the like principles, I deem them to be the aim of the struggle of the devoted Democracy in this signal contest; and so understanding them, I glory in their declaration and defence. I would sacrifice much and go far to uphold your arms in this battle. I would most gladly visit your people, address them, and invoke them to stand fast by the standard of their faith and freedom, and never to let go the truths for which they contend, for they are vital and cardinal and essential, and can never be yielded without yielding liberty itself. But, sir, I am like a tied man, bound to my duties here; and if my office would allow me to leave it, I could not depart from the bedside of illness in my family, which would probably recall me before I could reach Illinois; and my own state of health admonishes me that I ought not to undertake a campaign as arduous as that you propose. I know what the labors of the stump are, and am not yet done suffering bodily from my efforts for Democracy in 1855. For these reasons I cannot obey your call; but, permit me to add, fight on! fight on! fiight on! Never yield but in death or victory! And oh that I was unbound, and could do more than look on, throbbing with every pulse of your glorious struggle—with its every blow and breath—cheered with its hopes and chafed by its doubts. You have my prayers,

And I am yours, truly,

HENRY A. WISE.

Hon. JOHN MOORE, Chairman, &c.